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**(UNREDACTED)**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	NO. 13-20067
	)	
ROBERT DREW,	)	
	)	
Defendant.	)	

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TRIAL PROCEEDINGS  
BEFORE THE HONORABLE JOHN T. FOWLKES, JR., JUDGE  
WEDNESDAY AFTERNOON  
APRIL 23, 2014  
THURSDAY MORNING  
APRIL 24, 2014

LYNN DUDLEY  
OFFICIAL REPORTER  
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MEMPHIS, TENNESSEE 38103

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**WEDNESDAY AFTERNOON**

**APRIL 23, 2014**

The trial of this case resumed on this date, Wednesday, April 23, 2014, at 1:15 o'clock p.m., when and where evidence was introduced and proceedings were had as follows:

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**THE COURT:** All right. All the jurors here?

**THE CLERK:** Yes, sir.

**THE COURT:** Okay. Anything before we get back to the jury?

**MR. BIGGERS:** Your Honor, these next three witnesses it will require the lights be dimmed for a portion of their testimony.

**THE COURT:** All right. I will give them a heads up on that, it's not a power outrage or anything like that.

**MR. BIGGERS:** And I hope they don't fall asleep after their lunch.

**THE COURT:** All right. Are we ready?

**MS. JERMANN-ROBINSON:** Yes, Your Honor.

**THE COURT:** All right. Bring them in,

1 please.

2 (Jury present at 1:30 p.m.)

3 **THE COURT:** All right. Good afternoon,  
4 ladies and gentlemen.

5 **A JUROR:** Good afternoon.

6 **THE COURT:** I hope lunch was good, don't  
7 fall asleep now or anything like that.

8 I do want to alert you to one thing that  
9 the next couple of witnesses, there's been a request  
10 to dim the lights when we look at some of these  
11 videos. It may help to bring things in better  
12 focus, I don't know, something with the light.

13 So the way it will look in here as though  
14 court is closed. You see when court is closed, all  
15 of these lights are out with the exception of, I  
16 think, one back there by the back door and maybe one  
17 or two up here, and so it will be fairly dark in  
18 here. It won't be pitch dark, but don't be alarmed,  
19 it's not power outage or anything when they dim the  
20 lights. Okay.

21 With that being said, I think we can move  
22 forward now.

23 And, Mr. Stringfellow, if you would,  
24 please, call your next witness.

25 **MR. STRINGFELLOW:** The government calls

1 Officer George Herbert.

2 **THE COURT:** All right. You are good right  
3 there.

4 If you would, please, raise your right  
5 hand.

6 Do you solemnly swear or affirm, under the  
7 penalties of perjury, the testimony that you are  
8 about to provide the court and jury in the case now  
9 on trial to be the truth, the whole truth and  
10 nothing but the truth, so help you God?

11 **THE WITNESS:** I do.

12 **THE COURT:** Have a seat right here if you  
13 would, please.

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1                                    **GEORGE HERBERT,**  
2        was thereupon called as a witness on behalf of the  
3        Plaintiff, and having been first duly sworn,  
4        was examined and testified as follows:

5                                    **DIRECT EXAMINATION**

6        **BY MR. STRINGFELLOW:**

7        **Q.**        State and spell your name for the record.

8        **A.**        Detective George Herbert, H-e-r-b-e-r-t.

9        **Q.**        Detective Herbert, you work for the Memphis  
10       Police Department?

11       **A.**        I do.

12       **Q.**        What do you do?

13       **A.**        Right now I'm a detective with Old Allen  
14       Station General Investigations Bureau.

15       **Q.**        And how long have you worked with the Memphis  
16       Police Department?

17       **A.**        All total, 20 years.

18       **Q.**        Were you working for the Memphis Police  
19       Department in December 7th, 2012?

20       **A.**        Yes, I was.

21       **Q.**        Were you assigned to a different area within  
22       the Memphis Police Department that day?

23       **A.**        Yes, I was in uniform patrol.

24       **Q.**        Now what does uniform patrol do?

25       **A.**        Uniform patrol responds to calls for

1 domestics, burglaries, robberies.

2 Q. On December 7th, 2012, did you respond to a  
3 robbery in progress at the KFC on Highway 64?

4 A. Yes, I did.

5 Q. I'm showing you what's been previously  
6 admitted into evidence as Exhibit 30.

7 Do you recognize that?

8 A. Yes, I do.

9 Q. Is that the KFC that the robbery in progress  
10 came from?

11 A. Yes, it is.

12 Q. When you arrived at the KFC, what did you do?

13 A. We secured the scene and made contact with  
14 the cashier that was working the counter.

15 Q. And generally speaking, when you all respond  
16 to robberies in progress, what type of information  
17 are you all looking to collect?

18 A. The first thing we want to know is if the  
19 scene is secure and if the suspect is still on the  
20 scene. And in this incident he was not.

21 Q. Were you all able to -- did you speak with  
22 the victim?

23 A. I did not, my partner did.

24 Q. What did you do?

25 A. I went inside and made contact with the

1 manager and watched the security surveillance video.

2 Q. Do you know if a description of the suspect  
3 was broadcast out?

4 A. Yes, it was.

5 Q. How do you know that?

6 A. I heard it over my radio, my partner put it  
7 out.

8 Q. What -- what was the description that was  
9 broadcast out?

10 A. Male black, dark blue hoody, faded bluejeans,  
11 wearing a dark colored puffy jacket, armed with a  
12 handgun.

13 Q. When you were meeting with the manager, did  
14 you then watch the video?

15 A. Yes, I did.

16 Q. What did it show in the video?

17 A. The individual came in through the west door,  
18 approached the counter, pointed a gun at the clerk.  
19 He saw the clerk backup away from the counter. The  
20 individual stood at the counter for a few minutes  
21 with the gun, put his left hand on the counter and  
22 leaned forward, then he backed off and went back out  
23 the west door.

24 Q. I'm now going to show you what has been  
25 previously admitted into evidence as Exhibit 31, the

1 KFC video.

2 (Videotape playing.)

3 **BY MR. STRINGFELLOW:**

4 **Q.** Do you recognize the individual on the left  
5 side of that video?

6 **A.** Yes, I do.

7 **Q.** Who is that?

8 **A.** That is Mr. Baker.

9 **Q.** Was he the victim --

10 **A.** He was the --

11 **Q.** -- of the attempted robbery?

12 **A.** -- he was the clerk at the cashier.

13 **Q.** And the individual on the right, is that the  
14 suspect of the attempted robbery?

15 **A.** Yes, it is.

16 **Q.** Would you please, using the screen in front  
17 of you, circle what appears to be a gun?

18 **A.** Right there (indicating).

19 **Q.** And would you also draw a circle around what  
20 you described as a dark colored jacket.

21 **A.** (Indicating).

22 **Q.** Officer Herbert, was there anything  
23 inconsistent with what the victim told you and what  
24 you saw in the video?

25 **A.** Yes.

1 Q. What was that?

2 A. The color of the weapon.

3 Q. After you watched this video and secured the  
4 scene, what did you then do?

5 A. I completed the incident report on the PDA or  
6 the handheld computer.

7 Q. And did you leave?

8 A. Not right away. Sergeant Murry Wilson, from  
9 felony response, made the scene and also my  
10 lieutenant.

11 Q. What is felony response?

12 A. Felony response handles all felony situations  
13 that happen after hours. They will be the initial  
14 officers that make the scene of homicides that  
15 happen at night, robberies, burglaries, any --  
16 anything where somebody is a violent crime or  
17 somebody was taken into custody.

18 And then once they did their initial  
19 investigation, they pass it back to the appropriate  
20 bureau that works day shift and they handle it.

21 Q. So when Sergeant Wilson arrived, was that the  
22 end of your role in this investigation?

23 A. After submitting the report into the  
24 computer, yes.

25 Q. Do you know if any fingerprints were taken

1 from the KFC?

2 A. No, sir, no prints were taken.

3 Q. And why was that?

4 A. The individual was wearing gloves.

5 Q. Did you observe that in one of the videos?

6 A. Yes.

7 Q. I'm now going to show the second angle on  
8 what's been previously admitted into evidence as  
9 Exhibit 31, the KFC video.

10 Officer Herbert, is that -- the door right  
11 there, is that the west side exit that you mentioned  
12 earlier?

13 A. Yes, sir.

14 (Videotape playing.)

15 **BY MR. STRINGFELLOW:**

16 Q. And is that the robber that we saw on the  
17 other video?

18 A. Yes, it is.

19 Q. Office Herbert, when you watch the videos,  
20 does it appears that the suspect was wearing a mask?

21 A. Yes, it does.

22 Q. Now I'm going to ask if you can see where he  
23 is wearing a glove in this video?

24 Will you please circle what you thought was a  
25 glove.

1     **A.**           (Indicating).

2                   **MR. STRINGFELLOW:**   Your Honor, may I  
3 confer with cocounsel?

4                   **THE COURT:**   Go ahead.

5                   **MR. STRINGFELLOW:**   That's all the  
6 questions that I have for Detective Herbert.

7                   Thank you.

8                   **THE COURT:**   Thank you.

9                   And is there cross?

10                  **MS. JERMANN-ROBINSON:**   One moment, please.

11                  **THE COURT:**   Uh-huh.

12                  **MS. JERMANN-ROBINSON:**   Your Honor no  
13 questions.

14                  Thank you.

15                  **THE COURT:**   All right, thank you.

16                  Detective Herbert, thank you very much.  
17 You can step down, you are excused.

18                  **THE WITNESS:**   Thank you.

19                               (Witness excused.)

20                  **THE COURT:**   Call your next witness.

21                  **MR. BIGGERS:**   The government calls  
22 Sergeant Wilson to the witness stand, Your Honor.

23                  **THE COURT:**   Okay.   You are good right  
24 there.

25                  Raise your right hand.

1           Do you solemnly swear or affirm, under the  
2 penalties of perjury, the testimony that you are  
3 about to provide the court and jury in the case now  
4 on trial to be the truth, the whole truth and  
5 nothing but the truth, so help you God?

6           **THE WITNESS:** Yes, sir.

7           **THE COURT:** Have a seat right here if you  
8 would, please.

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1                                    **MURRAY WILSON,**

2        was thereupon called as a witness on behalf of the  
3        Plaintiff, and having been first duly sworn,  
4        was examined and testified as follows:

5                                    **DIRECT EXAMINATION**

6        **BY MR. BIGGERS:**

7        **Q.**        Good afternoon.

8        **A.**        Good afternoon.

9        **Q.**        Please state and spell your name for the  
10       record.

11       **A.**        It's Murray Wilson.    M-u-r-r-a-y,  
12       W-i-l-s-o-n.

13       **Q.**        Where are you currently employed?

14       **A.**        The Memphis Police Department.

15       **Q.**        How long have you been with the MPD?

16       **A.**        A little over 21 years.

17       **Q.**        What position do you currently hold with MPD?

18       **A.**        I am a sergeant with the felony in response  
19       unit.

20       **Q.**        Briefly describe the function and duty of a  
21       felony in response detective?

22       **A.**        Felony in response, we handle after hours  
23       investigation, any felony investigation that  
24       requires us making the scene that occurs between  
25       four and midnight, that's what we do, we make the

1 scene or they bring them to us. Just anything that  
2 requires investigation.

3 Q. Now were you in this position in December of  
4 2012?

5 A. I was.

6 Q. Specifically were you working the evening of  
7 December 7th, 2012?

8 A. Yes, I was.

9 Q. Did you receive a call to respond to an  
10 attempted robbery at the KFC or Kentucky Fried  
11 Chicken located at 8995 Highway 64?

12 A. I was.

13 Q. Approximately what time did you receive that  
14 call?

15 A. I received the call around 9:30, 9:45 that  
16 evening.

17 Q. Did you, in fact, respond to the scene?

18 A. I did.

19 Q. By the time that you had arrived to the scene  
20 had other officers already made the scene and secured  
21 it?

22 A. Yes, there was two uniform patrol officers on  
23 the scene when I arrived.

24 Q. Who were those uniform patrol officer?

25 A. Officer Herbert and I believe Stewart, and I

1 believe Lieutenant Glass was on the scene as well.

2 Q. Was Lieutenant Glass the lieutenant for  
3 officers Herbert and Stewart?

4 A. Yes, she was.

5 Q. When you make the scene as part of felony  
6 response, what's your objective, what's your point  
7 of coming to the scene?

8 A. First of all to determine if a crime had  
9 occurred, what investigation, if any, is necessary  
10 to take statements, if necessary, and also be  
11 responsible for calling the crime scene if  
12 necessary.

13 Q. In this particular case did you have an  
14 opportunity the speak to any victim?

15 A. I did.

16 Q. Who did you speak to?

17 A. I spoke with the cashier that was working  
18 that day, I believe a Mr. Baker.

19 Q. You obtained a suspect description from  
20 Mr. Baker?

21 A. I did.

22 Q. All right. Did you review any other evidence  
23 while on the scene?

24 A. I did. I went in with the manager and also  
25 with the lieutenant on the scene and viewed the

1 video.

2 Q. You motioned at the scene, is this -- do you  
3 recognize what is depicted --

4 A. Yes --

5 Q. -- on the television screen in front of you?

6 A. This is an accurate depiction of the video  
7 that I watched, yes.

8 Q. From that description that you saw on the  
9 video, was the clothing description consistent with  
10 what the victim told you?

11 A. It was slightly different. He told me the  
12 suspect was wearing what he appeared to be, to him,  
13 was a bubble coat. And upon watching -- looking at  
14 the video it didn't appear to us it was.

15 Q. Did you receive a description of the firearm?

16 A. Yes. He told me -- he told me that it was a  
17 silver handgun. Which, upon reviewing the video, it  
18 appeared to be black.

19 Q. Please play the first clip.

20 While it is being pulled up.

21 At the time you arrived on the scene had a  
22 suspect or person been identified as the robber?

23 A. Identified, no, just had a description of an  
24 individual.

25 Q. Was anyone able to provide you any

1 information as to how that person left the scene?

2 **A.** Other than he left on foot towards the  
3 Circle K.

4 **Q.** From your review of the video could you tell  
5 whether or not the robbery suspect's face was  
6 covered at all?

7 **A.** It appeared to be, yes.

8 **Q.** How?

9 **A.** With a mask.

10 **Q.** Do you know if any -- you mentioned that  
11 crime scene may or may not have been called, do you  
12 know if crime scene actually came to this scene?

13 **A.** No, the crime scene was not called and that  
14 was my decision after reviewing the video and the  
15 information given to me by the victim, the suspect  
16 appeared to be wearing gloves, so there was nothing  
17 to process.

18 **Q.** We're playing this portion of the video.

19 (Videotape playing.)

20 **A.** That's the suspect walking in the door there.  
21 See him producing what looks like a black handgun  
22 pointing it at the -- at the victim.

23 And I believe here in a moment he actually  
24 cocks, there he is, he's cocking the revolver. And  
25 he reaches over, I guess trying to get into the cash

1 register, but he is unsuccessful.

2 Q. You mentioned that he was wearing gloves,  
3 that hand you saw him reach over with, was that one  
4 of the gloved hands?

5 A. Yes, sir.

6 Q. Thank you.

7 MR. BIGGERS: Mr. Herrin, you can bring  
8 the lights back up.

9 BY MR. BIGGERS:

10 Q. Sergeant Wilson, per your investigation on  
11 that night, December 7th, 2012, after reviewing this  
12 video, were you able to come up with any  
13 identification of who this robber was?

14 A. No, sir, nothing other than what we observed  
15 on the video.

16 Q. And you do any report in relation to your  
17 work on this case?

18 A. I just did a very short supplement. When I'm  
19 done with that, we just do the preliminary  
20 investigation, the felony response, and then we turn  
21 it over to the appropriate investigating bureau,  
22 which at that time was the robbery bureau.

23 Q. And do you know when the robbery bureau would  
24 have likely received this case?

25 A. That next morning when they came in to work.

1 Q. And you handled it because you're felony  
2 response, you handled things after hours, is that  
3 correct?

4 A. That's correct.

5 MR. BIGGERS: No further questions of the  
6 witness, Your Honor.

7 THE COURT: All right, thank you.  
8 And is there cross?

9 MS. JERMANN-ROBINSON: Thank you, Your  
10 Honor.

11 CROSS EXAMINATION

12 BY MS. JERMANN-ROBINSON:

13 Q. Sergeant Wilson?

14 A. Yes, ma'am.

15 Q. Okay. Sergeant Wilson, I just want to make  
16 sure I heard right, you said that Mr. Baker told you  
17 that it was a puffy jacket or a bubble jacket or  
18 something like that?

19 A. Yes, ma'am.

20 Q. Okay.

21 MS. JERMANN-ROBINSON: Nothing further,  
22 Your Honor.

23 THE COURT: Thank you.  
24 Any redirect?

25 MR. BIGGERS: Nothing of this witness,

1 Your Honor.

2 **THE COURT:** Okay. Sergeant, thank you  
3 very much, you can step down, you are excused.

4 **THE WITNESS:** Yes, sir, thank you.

5 (Witness excused.)

6 **MR. BIGGERS:** Your Honor, the government  
7 calls Sergeant Tony Cox to the witness stand.

8 **THE COURT:** All right.

9 Okay. You are good right there.

10 Officer, raise your right hand.

11 Do you solemnly swear or affirm, under the  
12 penalties of perjury, the testimony that you are  
13 about to provide the court and jury in the case now  
14 on trial to be the truth, the whole truth and  
15 nothing but the truth, so help you God?

16 **THE WITNESS:** I do.

17 **THE COURT:** All right. Come forward if  
18 you would, please, and take the chair right there in  
19 the witness stand.

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1 TONY COX,

2 was thereupon called as a witness on behalf of the  
3 Plaintiff, and having been first duly sworn,  
4 was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BIGGERS:

7 Q. Good afternoon.

8 A. Good afternoon.

9 Q. Please state and spell your name in the  
10 microphone?

11 A. Sergeant Tony Cox -- T-o-n-y C-o-x.

12 Q. Where are you currently employed?

13 A. Memphis Police Department, Crump GIB.

14 Q. Say Crump GIB.

15 A. Correct.

16 Q. What does that mean?

17 A. That's, GIB stands for General Investigative  
18 Bureau.

19 Q. What are your duties in your assignment to  
20 the GIB?

21 A. I investigate a number of different crimes.

22 Q. What position do you hold with the Memphis  
23 Police Department?

24 A. I'm a sergeant.

25 Q. How long have you been with MPD?

1     **A.**       Nineteen years.

2     **Q.**       In December of 2012 what position did you  
3 hold with MPD?

4     **A.**       I was a robbery investigator.

5     **Q.**       Were you working specifically -- well, did  
6 you learn of a robbery, attempted robbery that  
7 occurred at the KFC on Highway 64 on the night of  
8 December 7th, 2012.

9     **A.**       I did.

10    **Q.**       All right. How did you first learn of that  
11 robbery?

12    **A.**       I was assigned that case.

13    **Q.**       Do you recall when you were assigned that  
14 case?

15    **A.**       It was December the 10th.

16    **Q.**       So a few days after the robbery, is that  
17 correct?

18    **A.**       Correct.

19    **Q.**       What -- describe for the ladies and gentlemen  
20 of the jury what type of information that you had at  
21 your disposal when you were first assigned the case?

22    **A.**       I had the initial report from the uniform  
23 patrol, and I had the supplement from felony  
24 response.

25    **Q.**       Did you have an opportunity to review that

1 information?

2 **A.** I did.

3 **Q.** All right. At the time had a suspect been  
4 identified as a person responsible for committing  
5 that attempted robbery?

6 **A.** We had a description of a suspect.

7 **Q.** Did you know that person's name at that time?

8 **A.** I did not.

9 **Q.** What efforts did you do per your  
10 investigation to determine the identity of that  
11 suspect?

12 **A.** I -- I basically went to KFC to get a copy of  
13 the video, and I spoke with the victim to see  
14 what -- what description he could give me or any  
15 leads.

16 **Q.** You say the victim, who did you speak to?

17 **A.** Jesse -- what is his name -- Jesse Baker.

18 **Q.** When did you speak to Jesse Baker?

19 **A.** December the 11th.

20 **Q.** The following day after being assigned the  
21 case?

22 **A.** Correct.

23 **Q.** Did you -- were you able to get -- obtain a  
24 description from Jesse Baker of the suspect?

25 **A.** I did.

1 Q. All right. Specifically what clothing did  
2 you receive?

3 A. He said the suspect was wearing light  
4 bluejeans. It was a jacket that was light blue and  
5 dark blue checkered pattern. He had -- he was  
6 wearing boots, and he was armed with a revolver.

7 Q. During your, I guess, interview and statement  
8 that you took from Jesse Baker, did he tell you the  
9 color of the firearm?

10 A. I think he said it was silver in color.

11 Q. Did you have an opportunity to actually  
12 review the video?

13 A. I did.

14 Q. What color did the firearm appear to be in  
15 the video?

16 A. It was black.

17 Q. After you obtained the video from the KFC and  
18 spoke to Mr. Baker, did you do anything else per  
19 your investigation?

20 A. Could you repeat that?

21 Q. Specifically on December 11th --

22 A. Uh-huh.

23 Q. -- did you receive any additional information  
24 regarding --

25 A. I --

1 Q. -- your investigation?

2 A. -- I did. I -- I received a call from  
3 Sergeant Atkins with the Oakland Police Department.

4 Q. What was the nature of that conversation?

5 A. Basically he, to my understanding, was aware  
6 of an attempt robbery that happened at that KFC and  
7 he was doing a follow-up with me in regards to that  
8 robbery.

9 Q. You say he was aware of a robbery, was that  
10 the same robbery that you were assigned?

11 A. Correct.

12 Q. What, if any, information did you request  
13 from Sergeant Atkins?

14 A. I requested the name of the suspect that he  
15 had, the clothing description or whatever, you know,  
16 whatever information he could provide to me.

17 Q. Was he able to provide you with any  
18 information?

19 A. He was.

20 Q. What did he provide you with?

21 A. He provided me with photos of the clothing  
22 that that suspect that he in custody was wearing  
23 that night that he was arrested as well as the --  
24 the weapon.

25 Q. Now I'm going to show you clothing.

1 This is Exhibit 29.

2 You recognize those photographs?

3 A. I do.

4 Q. Speaks into the mic, please.

5 A. I do.

6 Q. What are those photographs of?

7 A. That is a photograph of the jacket that  
8 Mr. Robert Drew was wearing apparently that night.

9 Q. Now you say "apparently," let me ask you  
10 specifically.

11 These photographs, do you know or have you  
12 seen them before?

13 A. I have.

14 Q. Where did you see them?

15 A. They -- they were photos sent to me by the  
16 Oakland Police Department as well as from the video  
17 that I viewed from my robbery.

18 Q. You're talking about the KFC robbery?

19 A. That's correct.

20 Q. These are the photographs that Sergeant  
21 Atkins sent you?

22 A. Correct.

23 Q. Is that consistent with what you saw in the  
24 video?

25 A. It is.

1 Q. How?

2 A. Well, the -- it's a light blue and dark blue  
3 checkered pattern jacket with a hood.

4 Q. What color is the hood?

5 A. The hood is black.

6 Q. Anything else unique about this jacket?

7 A. It had a logo on the left -- the left pocket.

8 Q. Please circle what you are referring to.

9 A. (Indicating).

10 Q. Second page of Exhibit 29.

11 Do you recognize that?

12 A. I do.

13 Q. What is that?

14 A. Those were the jeans, photo of jeans that  
15 were sent from what Mr. Drew was wearing.

16 Q. This is also what you received from Sergeant  
17 Atkins, is that correct?

18 A. That's correct.

19 Q. Those jeans consistent with what you saw in  
20 your KFC robbery video?

21 A. They were.

22 Q. Third page of Exhibit 29.

23 You recognize that?

24 A. I do.

25 Q. What is that?

1     **A.**       That's a ski mask that my suspect was  
2     wearing.

3     **Q.**       Now where did you get these photographs?

4     **A.**       From Detective Atkins.

5     **Q.**       You say "ski mask," clearly it's a hat, is  
6     that correct?

7     **A.**       Correct.

8     **Q.**       Do you see any eyeholes in that hat?

9     **A.**       I do.

10    **Q.**       Now a ski mask, if you buy a ski mask the  
11    holes are manufactured, come manufactured in the  
12    mask, is that correct?

13    **A.**       That's correct.

14    **Q.**       Was that the way this mask was?

15    **A.**       No, it wasn't.

16    **Q.**       Do you recognize the fourth page of  
17    Exhibit 29?

18    **A.**       I do.

19    **Q.**       What is that?

20    **A.**       That is the thermal, white thermal shirt that  
21    was sent to me by Detective Atkins that Mr. Drew  
22    apparently was wearing.

23    **Q.**       You say a "thermal shirt," the photograph of  
24    the shirt, is that correct?

25    **A.**       Correct.



1 Q. Was it consistent with your robbery suspect  
2 at all?

3 A. It was. My robbery suspect did have -- I  
4 could tell that he had a light shirt on up under  
5 the -- the coat that he was wearing.

6 Q. Another page of Exhibit 29.

7 Do you recognize those?

8 A. Correct.

9 Q. What are those?

10 A. Those are gloves.

11 Q. All right. Was your robbery suspect wearing  
12 gloves?

13 A. He was.

14 Q. Are those consistent with the gloves that you  
15 saw in your video?

16 A. It is.

17 Q. Do you recognize that?

18 A. I do.

19 Q. Another photograph of Exhibit 29.

20 What are those?

21 A. Those are the boots that -- a photograph of  
22 the boots that were collected from Mr. Drew.

23 Q. Your robbery suspect, do you recall what type  
24 of shoes he was wearing?

25 A. He was wearing some -- some boots like that.

1 Q. Another page from Exhibit 29.

2 Do you recognize that?

3 A. I do.

4 Q. What is that?

5 A. That's the revolver, a picture of the  
6 revolver that was collected from Mr. Drew.

7 Q. Also consistent with the revolver used in  
8 your robbery?

9 A. It is.

10 Q. Now do you recall if Sergeant Atkins provided  
11 you with any photographs of their robbery suspect?

12 A. He did.

13 Q. Another page from Exhibit 29.

14 Do you recognize that?

15 A. I do.

16 Q. What is that?

17 A. That's a photograph of the robbery suspect in  
18 their robbery in Oakland apparently.

19 Q. And do you see any of the clothing items that  
20 you saw identified in the other photographs on this  
21 picture?

22 A. I do.

23 Q. Please name them and circle them?

24 A. Okay. This is the ski mask, the jacket, the  
25 white shirt that I was referring to, the revolver

1 and the jacket has the logo right here (indicating).

2 Q. All right. Last picture from Exhibit 29.

3 Same thing, do you recognize this photograph?

4 A. I do.

5 Q. What's shown there?

6 A. This is the revolver, the white shirt, the  
7 jacket, gloves -- glove I should say (indicating).

8 Q. Only one glove in this photograph, is that  
9 correct?

10 A. Correct.

11 Q. Which robbery -- which robbery is this  
12 photograph from?

13 A. This is the photograph from the Oakland  
14 robbery.

15 Q. This is the photograph that was provided to  
16 you by Sergeant Atkins?

17 A. Correct.

18 Q. Showing you three photographs.

19 Tell me if you recognize those photographs?

20 A. I do.

21 Q. What are those three photographs of?

22 A. These are the photographs of the KFC robbery  
23 and I think it's 8995 Highway 64.

24 Q. Do all three of those photographs accurately  
25 depict what is displayed on the robbery during that

1 robbery?

2 **A.** Correct.

3 **MR. BIGGERS:** At this time the government  
4 moves to admit all three photographs.

5 **THE COURT:** All right. I believe next is  
6 number 32?

7 **THE CLERK:** Yes.

8 **THE COURT:** All right. We will introduce  
9 them, be collective, three photographs will be  
10 Exhibit 32.

11 (Exhibit Number 32 was marked;  
12 Description: Photographs.)

13 **BY MR. BIGGERS:**

14 **Q.** Now, Sergeant Cox, you just reviewed for the  
15 ladies and gentlemen of the jury the consistency  
16 with the clothing items that were photographed and  
17 sent to you by Sergeant Atkins and that worn by the  
18 robbery suspect in the Oakland robbery. I'm about  
19 to show you these still shots that you just  
20 identified from the KFC robbery that also occurred  
21 on December 7th, 2012 and I want you to point out  
22 the consistency of these photos for the ladies and  
23 gentlemen of the jury. Okay.

24 **A.** Yes.

25 **Q.** Okay. First picture in collective

1 Exhibit 32.

2 What consistencies do you see in that?

3 **A.** Well, he's wearing a ski mask here  
4 (indicating) with a hood on this jacket which is  
5 light complexion -- I mean, light blue, dark blue  
6 checkered board pattern.

7 He's wearing a glove here (indicating) with  
8 the light blue jeans.

9 Can't really show you -- see the boots from  
10 here, but also he has a white shirt up under that  
11 jacket.

12 **Q.** Do you notice the emblem that you identified  
13 on the other photographs on this exhibit?

14 **A.** There it is right there (indicating).

15 **Q.** Second page of Exhibit 32.

16 Now in this exhibit are you able to see any  
17 of those items that were photographed and sent to  
18 you?

19 **A.** I can tell that there is the white shirt  
20 sleeve. He has the handgun here (indicating), that  
21 same jacket on, ski mask.

22 **MR. BIGGERS:** All right. Your Honor, at  
23 this time ask Mr. Herrin to please dim the lights  
24 and go to the video.

25 Now play the second video.

1 (Videotape playing.)

2 **BY MR. BIGGERS:**

3 **Q.** Now this video plays, Sergeant Cox, I'm going  
4 to ask special agent, pause it right there.

5 I want you to describe the clothing or any  
6 other consistent clothing worn by the KFC robbery  
7 suspect's clothing?

8 **A.** These are the boots that were consistent with  
9 the photos that was sent to me by Detective Atkins,  
10 the light bluejeans, the jacket that has a hood, and  
11 the ski mask.

12 **Q.** Do you also see the shirt in that --

13 **A.** Shirt --

14 **Q.** -- image?

15 **A.** -- shirt sleeve right there.

16 **Q.** Were you able to tell how this suspect left  
17 the store?

18 **A.** Well, he left out of the same door he came  
19 in. So I would say that's probably, I don't know --  
20 I don't know the exact direction so I don't want to  
21 say.

22 **Q.** Did he leave on foot?

23 **A.** Yes, he did leave on foot.

24 **Q.** Where did he go once he walked out of the  
25 store?

1     **A.**       He went -- he went next door, which is the  
2     Circle K.

3     **Q.**       Do you recognize what's shown on the photo  
4     here, image on the screen?

5     **A.**       It appears to be the parking lot of the KFC.

6     **Q.**       And which way does that KFC face --

7     **A.**       It --

8     **Q.**       -- well, not direction, but what's -- what's  
9     in front of it?

10    **A.**       The highway, Highway 64.

11    **Q.**       Do you see Highway 64 on that --

12    **A.**       I do.

13    **Q.**       Where is that?

14            Please make an X on Highway 64.

15    **A.**       (Indicating).

16    **Q.**       All right. Give me full screen, please.

17            Okay. Okay. Play it?

18    **A.**       Oh, I'm sorry, that looks like the Circle K  
19    there.

20    **Q.**       All right.

21    **A.**       Because I can see the -- so apparently  
22    Highway 64 has to be right there, I believe  
23    (indicating).

24    **Q.**       Okay. Hit play.

25                   (Videotape playing.)

1 **BY MR. BIGGERS:**

2 **Q.** Who is that walking up from the X?

3 **A.** That's my robbery suspect.

4 **Q.** What -- you see a door there, where did he  
5 just go?

6 **A.** He went in the side entrance to the KFC.

7 **Q.** I see lights flashing in that area where you  
8 drew the X, what is that?

9 **A.** Those are passing vehicles.

10 **Q.** Is that Highway 64?

11 **A.** That is.

12 **Q.** You see someone come out of that door --

13 **A.** I did.

14 **Q.** -- who was that?

15 **A.** That's robbery suspect.

16 **Q.** And where is he going?

17 **A.** He fled and went towards the -- the Circle K.

18 **Q.** Okay. Again, where is the Circle K?

19 **A.** (Indicating).

20 **Q.** Now on that video did he run toward the  
21 Circle K or towards the Highway 64?

22 **A.** Well, he ran towards Highway 64 in the  
23 direction towards Circle K.

24 **Q.** Pause it for me.

25 Now right here next to the Circle, between



1 the Circle K and the KFC, is that a wall or do you  
2 know?

3 **A.** I don't recall whether there was a wall or  
4 not. It looks like it may be though.

5 **Q.** Okay. Now from the time you received that  
6 information from the Oakland Police Department, what  
7 did you do with that information?

8 **A.** When I received that information, basically I  
9 started trying to get them to send me some -- more  
10 detailed information and pictures of the suspect so  
11 I could kind of compare it with the video.

12 **Q.** And is that what you just reviewed in the  
13 court as far as the clothing that you compared  
14 between the two suspects?

15 **A.** I -- correct.

16 **Q.** Once you made that comparison, what  
17 determination did you come to?

18 **A.** I made the determination that it was in all  
19 likely probable hood that that was the same suspect  
20 based on the clothing description.

21 **Q.** Lights.

22 Anything unique about the jeans?

23 **A.** They had -- they were light in color but it  
24 seems like the thigh area of the jeans were kind of  
25 faded or worn.

1 Q. Showing you Exhibit 27, been admitted, the  
2 jeans worn by the defendant Robert Drew.

3 Do you see that worn thigh area, that you  
4 just testified to, on these jeans?

5 A. I do.

6 Q. Showing you what's been admitted as Exhibit  
7 10.

8 Do you recognize this?

9 A. I do.

10 Q. What is that?

11 A. That's the jacket that the suspect was  
12 wearing.

13 Q. When you say "the suspect," which suspect are  
14 you referring to?

15 A. Robert Drew.

16 Q. Okay. Was that based --

17 A. Well, the suspect at the KFC, that -- that  
18 robber that attempted to rob the KFC.

19 Q. And this consistent with the photograph sent  
20 to you by the Oakland Police Department?

21 A. It is.

22 Q. Do you see that emblem that you made  
23 reference to?

24 A. I do.

25 Q. Where is it, describe its location?

1     **A.**       It's on the left pocket.

2     **Q.**       Is this it (indicating)?

3     **A.**       It is.

4     **Q.**       You described a shirt, undershirt.

5               Show you what's been marked and admitted as  
6     Exhibit 28.

7               Recognize that?

8     **A.**       I do.

9     **Q.**       What is that?

10    **A.**       That's the thermal, white thermal shirt that  
11    was in -- in the photo of the robbery at the KFC.

12    **Q.**       And these are the sleeve -- the sleeves in  
13    this shirt is what you identified during the video,  
14    is that correct?

15    **A.**       That's correct.

16    **Q.**       Once you made this comparison to determine it  
17    was the same robber, what action did you take to  
18    follow-up?

19    **A.**       I -- I called Detective Atkins and see --  
20    attempted to try to set up an appointment so I could  
21    do an interview with Mr. Drew.

22    **Q.**       Did you have an occasion to speak to the  
23    person that you described as Robert Drew?

24    **A.**       I did.

25    **Q.**       Did you see him?

1     **A.**       Do I see him now?

2     **Q.**       Did you see when you --

3     **A.**       I did --

4     **Q.**       -- talked to him?

5     **A.**       -- I did.

6     **Q.**       The person you've described as Robert Drew,  
7 do you see him in the courtroom today?

8     **A.**       I do.

9     **Q.**       Please point to him and describe the clothing  
10 he's wearing?

11    **A.**       He's wearing a white shirt with black and  
12 maybe green polo-type shirt sitting at the table  
13 right near the TV screen.

14               **MR. BIGGERS:** Your Honor, ask that the  
15 record reflect that he has identified the defendant.

16               **THE COURT:** The record will reflect it.

17    **BY MR. BIGGERS:**

18    **Q.**       During that conversation did you ask Mr. Drew  
19 about the KFC robbery?

20    **A.**       I did.

21    **Q.**       What, if any, information did she give you?

22    **A.**       He basically told me that he was never in  
23 Memphis. And he basically had -- he was with  
24 relatives of his, and, you know, I could verify that  
25 information with them.

1 Q. Did you ask him about the clothing that he  
2 wore?

3 A. I did. I asked him about the jacket. And he  
4 told me basically it was a -- a jacket that a lot of  
5 people could possibly have and he bought it from the  
6 Good Will or something that effect. So it's a very  
7 common jacket basically how he put it.

8 Q. That's what he told you?

9 A. Yes.

10 Q. Did that end your investigation on this case?

11 A. It did.

12 Q. Did you attempt to file state attempt robbery  
13 charges against the defendant?

14 A. I did not. I was -- upon request from ATF,  
15 they advised me that they were trying to take the  
16 case federal, so they asked me not to file state  
17 charges on him.

18 MR. BIGGERS: Brief moment, Your Honor.

19 THE COURT: All right.

20 MR. BIGGERS: No further questions at this  
21 time, Your Honor.

22 THE COURT: Thank you.

23 And is there cross?

24 MS. JERMANN-ROBINSON: Yes, Your Honor.

25 Thank you.

1                   **THE COURT:** Uh-huh.

2                                   **CROSS EXAMINATION**

3       **BY MS. JERMANN-ROBINSON:**

4       **Q.**       Sergeant Cox?

5       **A.**       Yes, ma'am.

6       **Q.**       Mary C. Robinson for Robert Drew.

7                   In your investigation of this matter, did  
8       you, in fact, review the dispatch, I guess, from  
9       when this -- when this robbery at Kentucky Fried  
10      Chicken was originally called in?

11      **A.**       Did I review the dispatch?

12      **Q.**       Yes.

13                  Did you listen to it?

14      **A.**       No, I didn't.

15      **Q.**       Did you look at the written summary?

16      **A.**       Of the dispatch?

17      **Q.**       Yes.

18      **A.**       No, I didn't.

19      **Q.**       Are you aware that, originally that the  
20      broadcast was for a man in a plaid jacket, but then  
21      later it was corrected to a man in a bubble jacket?

22      **A.**       No, I'm not aware of that.

23      **Q.**       Not aware of that.

24                   **MS. JERMANN-ROBINSON:** No further  
25      questions.

1           **THE COURT:** Any redirect?

2           **MR. BIGGERS:** No, Your Honor.

3           **THE COURT:** Okay, Sergeant Cox, thank you  
4 very much. You can step down, you are excused.

5                           (Witness excused.)

6           **MR. BIGGERS:** The government calls special  
7 agent Brian Weeks.

8           **THE COURT:** All right.

9                           Okay. If you would, please -- you are  
10 good right there.

11                          Raise your right hand.

12                          Do you solemnly swear or affirm, under the  
13 penalties of perjury, the testimony that you are  
14 about to provide the court and jury in the case now  
15 on trial to be the truth, the whole truth and  
16 nothing but the truth, so help you God?

17           **THE WITNESS:** Yes, sir.

18           **THE COURT:** Just have a seat right here,  
19 please.

20

21

22

23

24

25

1 **BRIAN WEAKS,**

2 was thereupon called as a witness on behalf of the  
3 Plaintiff, and having been first duly sworn,  
4 was examined and testified as follows:

5 **DIRECT EXAMINATION**

6 **BY MR. BIGGERS:**

7 **Q.** Good afternoon.

8 **A.** How are you?

9 **Q.** Well, how about yourself?

10 **A.** Well.

11 **Q.** Please state and spell your name for the  
12 record?

13 **A.** Brian Weaks, B-r-i-a-n, W-e-a-k-s.

14 **Q.** Special Agent Weaks, tell the ladies and  
15 gentlemen where you're employed?

16 **A.** Bureau of Alcohol, Tobacco, Firearms and  
17 Explosives.

18 **Q.** Specifically what position do you hold with  
19 ATF?

20 **A.** I'm a special agent.

21 **Q.** How long have you been with ATF?

22 **A.** Approximately 13 years.

23 **Q.** Prior to coming to being employed with ATF,  
24 did you have any other law enforcement experience?

25 **A.** Yes. I was a police officer in



1 Hendersonville, Tennessee for seven years.

2 Q. Any other?

3 A. No, that's all.

4 Q. In your role with ATF, specifically what --  
5 what are your duties as a special agent?

6 A. As a special agent my basic duties are to  
7 investigate violations of federal law, primarily  
8 involving firearms, explosives and arsons.

9 Q. And have you had any specialized training  
10 with regard to your unique position with ATF?

11 A. Specialized training in to what I'm going to  
12 testify today in the Basic Special Agent Academy  
13 that I went to we were taught basic nomenclature of  
14 firearms and the workings of different types of  
15 firearms.

16 Later in my career I attended ATF's Advanced  
17 Interstate Nexus School where we learned much more  
18 in-depth nomenclature of firearms, how to look at  
19 firearms and read the proof markings on the firearms  
20 to determine the origin and manufacturer of that  
21 firearm.

22 Q. Special Agent Weaks, bear with me, you  
23 said -- you used a lot of words that I'm not  
24 familiar with --

25 A. Okay, I'm sorry.

1 Q. -- I'm not a firearm's expert.

2 Nomenclature and interstate nexus, describe  
3 for the ladies and gentlemen of the jury what  
4 interstate nexus is?

5 A. Interstate nexus is a very -- it's a big word  
6 for something that very basic, it's just anytime  
7 something travels across state lines, it then  
8 affects interstate nexus or interstate commerce.

9 Q. So when you talked about the training that  
10 you received to determine the interstate nexus of a  
11 firearm, what specifically were you looking for?

12 A. We're looking for certain proof markings on  
13 the firearm that determine -- that show me where the  
14 firearm was manufactured. If a firearm was, in this  
15 case, recovered in Tennessee but was manufactured,  
16 in this case, Brazil, at that point, at some -- at  
17 some point not only crossed interstate lines, but  
18 also traveled in foreign commerce.

19 Q. Now in this role with ATF, does it involve  
20 other duties that other ATF agents don't have?

21 A. Yes, because I'm specially trained in  
22 interstate nexus I look at the guns that are  
23 involved in the crimes that our agents investigate  
24 and determine whether they affect interstate  
25 commerce.

1 Q. And have you previously testified in federal  
2 or state court to this type of information?

3 A. Yes.

4 MR. BIGGERS: Your Honor at this time the  
5 government offers Mr. Weaks as a witness with  
6 specialized knowledge in the area of interstate  
7 nexus.

8 MS. JERMANN-ROBINSON: No objection.

9 THE COURT: An opinion -- as an opinion  
10 witness?

11 MR. BIGGERS: Yes, Your Honor.

12 THE COURT: Okay.

13 MS. JERMANN-ROBINSON: No objection.

14 THE COURT: All right, thank you.

15 Ladies and gentlemen, we will receive the  
16 special agent as an expert or an opinion witness.

17 What that does is it allows the witness to  
18 give his opinion about certain things that may be an  
19 issue in the case.

20 I will have a further instruction for you  
21 a little more detail when I give you the written  
22 instructions at the end of the case. But some of  
23 what he will testify to are his opinions based on  
24 his experience and training.

25 You may proceed.

1                   **MR. BIGGERS:** Thank you, Your Honor.

2                   **BY MR. BIGGERS:**

3                   **Q.**       Special Agent Weaks, specifically with regard  
4                   to a case involving Robert Drew, were you asked to  
5                   do conduct an interstate nexus search on a firearm  
6                   related to that case.

7                   **A.**       Yes, I was.

8                   **Q.**       What type of firearm was it?

9                   **A.**       It was a Rossi Model 68 .38 caliber revolver.

10                  **Q.**       And have you had the opportunity to examine  
11                  the firearm in this case?

12                  **A.**       Yes, I have.

13                  **Q.**       Show you what's been marked and admitted as  
14                  Exhibit 12. Take a look at that.

15                  You recognize it?

16                  **A.**       Yes.

17                  **Q.**       What do you -- speak into the mic, please.

18                  What do you recognize that to be?

19                  **A.**       This is the firearm that I examined for this  
20                  case.

21                  **Q.**       How do you know that's the same firearm?

22                  **A.**       Due to the serial number of AA803198, the  
23                  same serial number on the firearm that I examined.

24                  **Q.**       Before you get into your actual examination,  
25                  describe for the ladies and gentlemen of the jury

1 that actual firearm, it's appearance?

2 **A.** This is a, again, it's a Rossi .38 caliber  
3 revolver snubnose, appears to have a blue finish on  
4 it which just means it has a glossier high -- a high  
5 gloss finish on it, it's still a black firearm but  
6 they put a bluing on it that causes it to have a  
7 little bit higher gloss or shine.

8 **Q.** You used the term "snubnose," what do you  
9 mean by that?

10 **A.** That just has a shorter barrel than some  
11 other revolvers have.

12 **Q.** All right. Did you actually conduct an  
13 interstate nexus search on that firearm?

14 **A.** I did.

15 **Q.** Were you able to determine where it was  
16 manufactured?

17 **A.** Yes, I did.

18 **Q.** Where was it manufactured?

19 **A.** In Brazil.

20 **Q.** Were you able to determine from your  
21 interstate nexus search how it came to be in the  
22 United States?

23 **A.** That was imported by a company by the name of  
24 Interarms out of Alexandria, Virginia.

25 **Q.** All right. Now would it definitely be your

1 opinion that -- that exhibit, Exhibit 12, affected  
2 or traveled in interstate commerce and that it was  
3 recovered here in Memphis, Tennessee, here in the  
4 State of Tennessee?

5 **A.** Yes. Not only did it affect interstate  
6 commerce but it also affected foreign commerce.

7 **Q.** Thank you, Special Agent Weaks.

8 **A.** Yes, sir.

9 **MR. BIGGERS:** No further questions of this  
10 witness at this time.

11 **THE COURT:** Thank you.

12 Is there any cross?

13 **MS. JERMANN-ROBINSON:** No, no cross.

14 **THE COURT:** All right, Special Agent  
15 Weaks, thank you very much. You can step down, you  
16 are excused.

17 (Witness excused.)

18 **THE COURT:** Call your next witness.

19 **MR. BIGGERS:** Your Honor, at this time the  
20 government has no further witnesses. However, I  
21 would like to read into the record the stipulation  
22 of the parties.

23 **THE COURT:** All right, stipulation of the  
24 parties.

25 Why don't you go ahead and -- let me take

1 a look at it first and then mark it as an exhibit  
2 and then you go ahead and present to it the jury.

3 Let me take a look.

4 (Document passed to the court.)

5 **THE COURT:** Okay, we will go ahead and  
6 mark the stipulation as Exhibit Number 33 in the  
7 record, I believe that's the next number, 33?

8 **THE CLERK:** Yes, sir.

9 (Exhibit Number 33 was marked;  
10 Description: Stipulation.)

11 **THE COURT:** And, ladies and gentlemen, a  
12 stipulation, and this is the way they present some  
13 information to you, is an agreement between the  
14 parties as to something things that are very common  
15 and it saves us time in that additional witnesses  
16 are not necessary then to prove the information that  
17 they're presenting to you by way of this stipulation  
18 or agreement.

19 Again, in my written instructions to you  
20 at the end of the case, I'll have a section in there  
21 about stipulations and how you are to handle that.

22 Mr. Biggers, you may go ahead and proceed.

23 **MR. BIGGERS:** Thank you, Your Honor.

24 This is the stipulation of the parties in  
25 the case of United States of America versus Robert

1 Drew.

2 Comes now the United States of America by  
3 and through it's counsel, Edward L. Stanton, III,  
4 the United States Attorney for the Western District  
5 of Tennessee, and David Biggers, Assistant United  
6 States, and the defendant, Robert Drew, by and  
7 through his counsel, Mary Jermann-Robinson, and  
8 agree and stipulate as follows:

9 Paragraph One. On December 7th, 2012, the  
10 Hickory Center Market, located at 3305 Highway 64,  
11 Eads, Tennessee, was in a business engaged in  
12 interstate commerce.

13 Paragraph Two. On December 7th, 2012, the  
14 Kentucky Fried Chicken Restaurant, located at 8995  
15 Highway 64, Memphis, Tennessee, was then a business  
16 engaged in interstate commerce.

17 Paragraph Three. Prior to December 7th,  
18 2012, Robert Drew had been previously convicted of a  
19 felony offense, that is, a crime punishable by  
20 imprisonment for a term exceeding one year.

21 Accordingly, the parties agree that it  
22 will not be necessary for the government to present  
23 such evidence to the jury as these facts can be  
24 considered proven beyond a reasonable doubt.

25 And it is signed by myself, David Biggers,



1 defense counsel Mary Catherine Jermann-Robinson, and  
2 the defendant, Robert Drew, and dated.

3 At this time the government asks the court  
4 to take judicial notice that both locations, the  
5 Hickory Center Market in Eads, Tennessee, as well as  
6 the Kentucky Fried Chicken located in Memphis,  
7 Tennessee, are within the Western District of  
8 Tennessee.

9 **THE COURT:** All right. I'll take judicial  
10 notice of both facts.

11 **MR. BIGGERS:** At this time the government  
12 rests, Your Honor.

13 **THE COURT:** All right, thank you.

14 Ladies and gentlemen, you heard the last  
15 information and the very final thing that Mr.  
16 Biggers said was that the government rests its case  
17 at this time.

18 That signals to me that there are certain  
19 things that I have to take up with the lawyers.  
20 Some of the things that I have to take up are legal  
21 in nature and so I would have to -- I could take  
22 them up at side-bar, but we would be over here quite  
23 a while and y'all would be wondering what we're  
24 saying. Say that to say I'm getting ready to excuse  
25 you into the jury room. Why don't you all go ahead

1 and take your afternoon break at this time. It's  
2 going to take me about, I'd say, 20 minutes, maybe  
3 30 minute in order to get through the things with  
4 the lawyers and get to the point where we are ready  
5 to proceed.

6 Now remember my instructions, they are  
7 still in effect, leave your notebooks in your hairs,  
8 don't discuss the case, although you've heard the  
9 government's case, and we will get back to you, like  
10 I say, in about 20 or 30 minutes.

11 (Jury out at 2:23 p.m.)

12 **THE COURT:** Anyone need a break before we  
13 proceed?

14 As I think you know there's a few things  
15 that we need to take up at this time, motions, and  
16 then discussions about defense proof and things of  
17 that nature.

18 I'm ready to proceed at this time unless  
19 anyone needs a break.

20 **MR. BIGGERS:** The government does not need  
21 a break before proceeding with those matters.

22 **MS. JERMANN-ROBINSON:** I'm fine.

23 **THE COURT:** Why don't we start and I will  
24 ask if there are any motions?

25 **MS. JERMANN-ROBINSON:** Yes, Your Honor,

1     there are.

2                 On behalf of Robert Drew I have two  
3     motions. One is to renew my filed motion to  
4     suppress that was denied by magistrate court and  
5     then that was agreed to or approved by this court,  
6     that was a motion to suppress the identification as  
7     being suggestive -- suggestive. It was denied, I  
8     believe, because an identification of clothing, not  
9     of an individual.

10                But it seems very clear from the proof  
11     that was brought forth today, that were substantive  
12     identification of the clothing for the individual.  
13     And this individual was brought in front of a police  
14     car in handcuffs and a picture of him from the  
15     chin -- oh, I'm sorry -- from the chin all the way  
16     down was taken and given for identification purposes  
17     and that was admitted into evidence, and actually  
18     the photograph in evidence at this time, Your Honor.

19                And to say that is not suggestive, there  
20     are certainly many other ways, if clothing were at  
21     issue, they could have held him temporarily, removed  
22     his clothing, shown them to the victim. Those sorts  
23     of things could have been done.

24                It was done actually when the photographs,  
25     I suppose, were sent to, I don't know if they were

1 by e-mail or by mail, but sent from the Oakland  
2 Police Department to the Memphis Police Department,  
3 that would not be a suggestive, but we're talking  
4 about an actual person where you can see his -- you  
5 could see he's African-American, you can see that he  
6 is in custody, you can see that he is standing up  
7 against a police car, once of the witnesses even  
8 said that, but a police car.

9 Your Honor, I'm just renewing this motion,  
10 probably mostly for the record, but I can confirm  
11 that consider just being an identification of  
12 clothing, this is the entire government's case, that  
13 this clothing is the exact clothing that was on the  
14 person of Robert Drew.

15 And so I renew that motion at this time.

16 **THE COURT:** Anything else?

17 **MS. JERMANN-ROBINSON:** Yes.

18 I would like to make a general motion  
19 under *Jackson versus Virginia* to take this matter  
20 away from the jury and for a judgment of acquittal,  
21 the evidence is insufficient at this point to go to  
22 jury.

23 **THE COURT:** Okay, that do it, that's all?

24 **MS. JERMANN-ROBINSON:** I usually say and  
25 any other motions I need to renew, but I think

1     that's it.

2                 **THE COURT:** All right, thanks.

3                 Now let me hear from the government.

4                 **MR. BIGGERS:** Your Honor, dealing with the  
5     defendant's first motion, renewing the motion to  
6     suppress, the government's response, there was not  
7     an identification of a defendant, a person in this  
8     particular matter. All the witnesses that came  
9     before the court and testified, specifically  
10    Mr. Harris, that's who we're talking about,  
11    testified that he was never shown a face of the  
12    suspect, he was shown clothing. And it was on a  
13    person's body, but his identification was based on  
14    the actual clothing.

15                He pointed out the specifics of that  
16    clothing, the coloring of the jacket, and the unique  
17    embalm on that jacket's pocket as being consistent  
18    with his recollection of the robbery.

19                Now for that, the government ask that  
20    their motion be denied.

21                With regard to the second motion, the  
22    government submits that it submitted enough --  
23    presented enough proof to satisfy each and every  
24    element of all the charges in the five-count  
25    indictment, and that it should be submitted to the

1 jury.

2 **THE COURT:** Thank you.

3 Anything further, Ms. Robinson?

4 **MS. JERMANN-ROBINSON:** No, Your Honor.

5 **THE COURT:** All right, thank you.

6 I'm going to have to overrule both of the  
7 motions.

8 The motion to suppress, I reviewed the  
9 transcript and the arguments, the report and  
10 recommendation was presented by the magistrate, and  
11 I reviewed that, too, all of the filings and I  
12 adopted the findings of the or rather the R and R of  
13 the magistrate.

14 The indication that there really wasn't an  
15 issue as far as identification. It wasn't a person  
16 involved, it was an article involved, that being the  
17 jacket.

18 It seems as though the motion today is  
19 that the jacket and the way it was worn by the  
20 defendant that night and then later presented to the  
21 witness who testified in court was too suggestive, I  
22 have to disagree with that.

23 It may have been a squad car that the  
24 defendant was standing in front of, but you really  
25 can't tell that. I think one of the offices said

1 that because he knew. I mean, it's not like there's  
2 flashing lights, emblem on the side Oakland police  
3 or anything like that, but even if there were,  
4 there's nothing overly suggestive about the whole  
5 taking of the picture of the defendant from the neck  
6 down eliminating his -- his head.

7 Ms. Robinson argues that he was in  
8 custody.

9 Well, his hands were behind him. In the  
10 picture you can't see the cuffs that I remember.  
11 And correct me if I'm wrong on that, but the person  
12 standing with his hands behind his back clearly  
13 showing the jacket, along with the emblem or symbol  
14 or whatever it was on the jacket, and that's what  
15 the victim in the case identified -- identified.

16 So there is, I mean, it shows what it  
17 shows, the jacket and a person is wearing it but it  
18 is not suggestive. And, therefore, there is no  
19 prejudice as far as or undue prejudice as far as the  
20 presentation of the jacket to the witness and  
21 ultimately to the jury.

22 And if those are the reasons for the  
23 objection at this time, I have to overrule them,  
24 there's just, you know, there's just nothing there.

25 Sufficiency of the evidence. Of course,

1 this is a jury case and there are facts that the  
2 jury is going to have to make the final decision.

3 As I think you both know, the big issue  
4 right now is identification, the defendant as the  
5 person who was wearing those items and attempted to  
6 do those robberies.

7 But when I review the evidence that was  
8 presented in the light most favorable to the  
9 government, I have to overrule the motion.

10 There is sufficient evidence to allow this  
11 to go to the jury.

12 This is a circumstantial evidence case  
13 clearly. There's no direct identification of the  
14 defendant as the person, but clearly the  
15 circumstances point to that, all of the clothing  
16 items that were later found on the defendant or  
17 close to where he was apprehended have been  
18 introduced. We have seen them on both of the  
19 videos.

20 I mean, there will be arguments about  
21 whether or not it's the same jacket and thereby  
22 whether or not it's the same person, things like  
23 that, but that all -- that gives rise to jury  
24 questions ultimately that the jury is going to  
25 decide. Whether or not those clothing items that we



1 have in the courtroom now are the same clothing  
2 items that are on the videos, the jury will have to  
3 make that decision. Because the defendant was  
4 either wearing them or in close proximity to them  
5 when he was taken into custody. And, of course, the  
6 circumstances indicate that he was the person who  
7 had wore them just a few minutes after the attempt  
8 at the market in Oakland and, you know, sometime  
9 before, an hour or so, I don't know how long, at the  
10 KFC.

11 So clearly it's circumstantial evidence  
12 and clearly the jury is going to have to make the  
13 decision. But in the light most favorable to the  
14 government, our decision is that the jury are going  
15 to have to make, and so I'm going to have to  
16 overrule the motion at this time.

17 Let me turn now to the defense and ask  
18 about defense proof.

19 There's an indication earlier that there  
20 would be two witnesses. I just need to verify that  
21 and I also need to talk with you about the defendant  
22 and his decision.

23 **MS. JERMANN-ROBINSON:** That's correct,  
24 Your Honor, I have two very short witnesses. And I  
25 do not believe that Mr. Drew is going to testify.

1           **THE COURT:** All right. You ready to  
2 proceed with that and put it on the record now.

3           **MS. JERMANN-ROBINSON:** We can do that,  
4 Your Honor, I wasn't sure if you wanted me to voir  
5 dire him. I have spoken with him, I'm confident  
6 that that's his decision, but I know that some  
7 courts prefer to do it on the record.

8           **THE COURT:** I do. I always voir dire  
9 the -- the defendant just to make sure it's clear on  
10 the record.

11          **MS. JERMANN-ROBINSON:** Okay.

12          **THE COURT:** And so we can do that now  
13 or -- we are going to take a break anyway, and we  
14 can do it after the break.

15          **MS. JERMANN-ROBINSON:** Why don't we do it  
16 after the break, I will speak to him one more time  
17 to make sure that's decision.

18          **THE COURT:** All right, that sounds good.  
19 And are you ready with your witnesses?

20          **MS. JERMANN-ROBINSON:** I am. They are  
21 here.

22          **THE COURT:** Okay. So we will take about  
23 ten, 15 minutes and then we'll get the jury back in  
24 after we speak with Mr. Drew and hopefully finish  
25 the proof in the case. Okay.

1 All right. We'll be in recess.

2 **THE CLERK:** Court stands in recess.

3 (Recess at 2:32 p.m.)

4 **THE COURT:** Okay. Why don't we go ahead  
5 and proceed with Mr. Drew's decision about  
6 testifying.

7 I'm assuming it hasn't changed?

8 **MS. JERMANN-ROBINSON:** It has not changed,  
9 Your Honor.

10 **THE COURT:** Okay. I would like for him to  
11 come forward.

12 Come forward, Mr. Drew, if you would,  
13 please.

14 I need to place you under oath and we just  
15 have a couple of questions for you.

16 Okay, right there.

17 If you would, please, raise your right  
18 hand.

19 Do you solemnly swear or affirm, under the  
20 penalties of perjury, the testimony that you are  
21 about to provide the court in this matter on trial  
22 will be the truth, the whole truth and nothing but  
23 the truth, so help you God?

24 **THE WITNESS:** About the testimony?

25 **THE COURT:** Yes, that's right, be the

1 truth.

2 **THE WITNESS:** Yes, sir.

3 **THE COURT:** Just have a seat right here if  
4 you would.

5 **MS. JERMANN-ROBINSON:** Your Honor, do you  
6 want -- do you usually question them or do want me  
7 to?

8 **THE COURT:** I will, but I would like for  
9 you to go on and place on the record, you know, what  
10 the state of the situation is.

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1

**ROBERT DREW,**

2

was thereupon called as a witness on behalf of the

3

Defendant, and having been first duly sworn,

4

was examined and testified as follows:

5

**DIRECT EXAMINATION**

6

**BY MS. JERMANN-ROBINSON:**

7

**Q.** I know you're Mr. Drew, but will you state

8

your name and spell it for the record.

9

**A.** My name is Robert Drew. R-o-b-e-r-t,

10

D-r-e-w.

11

**Q.** And, Mr. Drew, I've been your lawyer since

12

you not charged over here in the federal system?

13

**A.** Yes, ma'am.

14

**Q.** And we have together prepared for this trial?

15

**A.** Yes, ma'am.

16

**Q.** And you have looked at the discovery and then

17

our investigation?

18

**A.** Yes, ma'am.

19

**Q.** And I shared that with you?

20

**A.** Yes, ma'am.

21

**Q.** We discussed the case?

22

**A.** Yes, ma'am.

23

**Q.** And we discussed that you have a right to

24

testify --

25

**A.** Yes.

- DIRECT

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1 Q. -- if you would like and tell the jury your  
2 side?

3 A. Yes.

4 Q. Also discussed the problems with that, that  
5 you have a record that the jury will never hear  
6 about if you don't testify, but, if you do, then  
7 your entire record within the last 10 years would  
8 come in?

9 A. Yes.

10 Q. And based on our discussions have you come up  
11 with a decision as to whether or not you would like  
12 to testify?

13 A. Yes, I have.

14 Q. And what is that decision?

15 A. That decision, I will not testify due to the  
16 facts of my past.

17 Q. And are you certain about this?

18 A. Yes, ma'am.

19 Q. Do you have any questions about your rights?

20 A. Do I have any questions?

21 Q. Any questions about your rights to testify or  
22 not to testify?

23 A. I understood that -- that clearly that if I  
24 testify that you bring my past record up, and I  
25 chose not due to the fact that this here is

1 something that I don't want to do.

2 Q. Okay.

3 MS. JERMANN-ROBINSON: All right, thank  
4 you, sir.

5 BY THE COURT:

6 Q. Now you're making this decision on your own,  
7 your own free will.

8 A. Yes, sir.

9 Q. And you made the decision after conferring  
10 with your lawyers?

11 A. I had already made the decision and my  
12 lawyer, I talked it over with her when she brought  
13 me the paperwork to sign. And I made, really I made  
14 my own decision that I wasn't going to do that.

15 Q. Okay. And that's your absolute right. And I  
16 think you know I will instruct the jury that they  
17 can't hold that against you, that you are going to  
18 be silent, do you understand that?

19 A. I hope so, Your Honor.

20 Q. On the other hand, if you decided that you  
21 wanted to testify, you know, it would be your right  
22 to testify and you could tell the jury in our own  
23 words what happened.

24 But I think you decided that you don't want  
25 to do that, is that right?

- DIRECT

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1     **A.**       I want my attorney to tell them what  
2     happened.

3     **Q.**       Okay. And so she will argue that for you  
4     after all the proof is in?

5     **A.**       Yes, sir.

6     **Q.**       But you don't want to tell them anything --

7     **A.**       No, I don't.

8     **Q.**       -- because of the fear of your criminal  
9     record?

10    **A.**       I want my attorney to.

11    **Q.**       And I think you made it clear, you made that  
12    decision?

13    **A.**       I made that decision, Your Honor.

14    **Q.**       All right. There is no force or coercion or  
15    anything like that, you are doing this of our own  
16    free will?

17    **A.**       Yes, sir.

18    **Q.**       Okay, thank you.

19               **THE COURT:** You can step down.

20               (Witness excused.)

21               **THE COURT:** Okay. Are you ready as far as  
22    your witnesses are concerned?

23               **MS. JERMANN-ROBINSON:** Yes, Your Honor.

24               **THE COURT:** Why don't we get all of the  
25    proof out of the way and then we will start talking



1 about jury charge. I'm starting to work on it back  
2 there. And obviously I'll meet with both sides  
3 before we get the final instruction together.

4 Let's go ahead and deal with the proof.

5 And so why don't you bring in the jury,  
6 please.

7 (Jury present at 3:00 p.m.)

8 **THE COURT:** Okay, folks, we're ready to  
9 pick it up and move forward at this time.

10 I think just prior to the break the  
11 government indicated they rest their case and so we  
12 are going to turn to the defense now and see if  
13 there will be any proof.

14 Ms. Robinson, Mr. Germany, will there be  
15 any proof from the defense?

16 **MS. JERMANN-ROBINSON:** Yes, Your Honor.

17 I would like to call Mr. Marvin Ponder.

18 **THE COURT:** Marvin Ponder, okay.

19 Come forward, sir.

20 Right up this way.

21 Okay, you are good right there.

22 Raise your right hand.

23 Do you solemnly swear or affirm, under the  
24 penalties of perjury, the testimony that you are  
25 about to provide the court and jury in the case now

1 on trial to be the truth, the whole truth and  
2 nothing but the truth, so help you God?

3 **THE WITNESS:** Yes, sir.

4 **THE COURT:** Have a seat right here if you  
5 would, please.

6 **MS. JERMANN-ROBINSON:** Thank you, Your  
7 Honor?

8 **THE COURT:** Uh-huh.

9  
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1                                   **MARVIN PENDER,**

2       was thereupon called as a witness on behalf of the  
3       Defendant, and having been first duly sworn,  
4       was examined and testified as follows:

5                                   **DIRECT EXAMINATION**

6       **BY MS. JERMANN-ROBINSON:**

7       **Q.**       Will you state your name, and please spell it  
8       for the court reporter.

9       **A.**       Yes, ma'am. It's Marvin Pender, M-a-r-v-i-n,  
10      P-e-n-d-e-r.

11      **Q.**       And who do you work for?

12      **A.**       The Memphis Police Department.

13      **Q.**       And what do you do?

14      **A.**       I am a communication supervisor.

15      **Q.**       And as a communication supervisor, would you  
16      explain for the jury a little bit about what you do?

17      **A.**       My daily tasks include dealing with the  
18      director, chiefs, overseeing over a hundred  
19      dispatchers, making tapes, audio request for court,  
20      and print a chronology, things like that.

21      **Q.**       Okay. And, if you would, explain a little  
22      bit about the dispatch process.

23                   Does that entail communications between  
24      officers and, I guess, the communications  
25      department?

1     **A.**       Yes, ma'am. Basically our dispatch works,  
2     our dispatchers, they stay in communications with  
3     the citizens when they call in on 9-1-1 or the  
4     non-emergency line. And we also have dispatchers  
5     who talk to the officers out in the field as well,  
6     like a life-line between the two.

7     **Q.**       Okay. And are those communications recorded?

8     **A.**       Yes, ma'am.

9     **Q.**       Okay. And are they timestamped?

10    **A.**       Yes, ma'am.

11    **Q.**       Okay. So would it be safe to say that you  
12    can tell what time an officer arrives at a scene,  
13    for example?

14    **A.**       Yes, ma'am.

15    **Q.**       Okay. Maybe when he leaves the scene?

16    **A.**       Yes, ma'am.

17    **Q.**       Maybe when they find evidence, things of that  
18    nature?

19    **A.**       Yes, ma'am, everything is documented.

20    **Q.**       Okay. And in the course of your job and in  
21    your employment, did you receive a request from my  
22    office for information concerning communications on  
23    a robbery at -- in -- I'm sorry -- in Lakeland,  
24    Tennessee at about 9:30 p.m. at the Kentucky Fried  
25    Chicken at, I believe it's 8895 Highway 64?

1     **A.**       Yes, ma'am.

2     **Q.**       Okay. And could you tell me what time that  
3     event began or can you tell that from, I guess from  
4     the dispatch event chronology?

5     **A.**       Yes, ma'am. The actual call was received at  
6     2140 hours which is 9:30 p.m.

7     **Q.**       9:40 p.m.?

8     **A.**       Yes, ma'am.

9     **Q.**       And can you tell from that chronology how you  
10    all received that information?

11   **A.**       Yes, ma'am. Looks like an employee called in  
12    on 9-1-1.

13   **Q.**       Okay. An employee of the store or does it  
14    just say employee?

15   **A.**       Employee from the KFC.

16   **Q.**       Okay. And that's what began this event?

17   **A.**       Yes, ma'am.

18   **Q.**       Okay. And does that chronology, does it  
19    accurately reflect all the calls between officers  
20    and communications throughout this investigation?

21   **A.**       Yes, ma'am, it does.

22   **Q.**       Okay. Can you tell me when the last  
23    communication was?

24   **A.**       The last communication between officer and  
25    dispatcher was at 2315 which is 11:15 p.m.

1 Q. Okay. And is that record kept in the usual  
2 course of your business as being the communications  
3 supervisor?

4 A. Yes, ma'am, it is.

5 Q. And are you under a duty to keep that record?

6 A. Yes, ma'am.

7 Q. And, again, does it accurately reflect what  
8 was requested, the events from -- I'm sorry -- the  
9 communications from that robbery on December the  
10 7th, 2012?

11 A. Yes, ma'am.

12 MS. JERMANN-ROBINSON: Like to have  
13 that -- offer that as the next exhibit, Your Honor.

14 THE COURT: Any objection?

15 MR. BIGGERS: Without objection, Your  
16 Honor, just attempted robbery and I believe it's  
17 8995, I'm not sure.

18 MS. JERMANN-ROBINSON: I thank him for the  
19 correction, he's right.

20 THE COURT: All right. There is no  
21 objection, I believe to the --

22 MR. BIGGERS: No objection, Your Honor.

23 THE COURT: -- introduction.

24 And we will go ahead and admit the  
25 documents.

1           How many documents do we have there.

2           **MS. JERMANN-ROBINSON:** It's one document  
3 but I believe it's three or four pages.

4           **THE COURT:** That's what I mean, pages.

5           **MS. JERMANN-ROBINSON:** Three pages.

6           **THE COURT:** Three-page document. And that  
7 will be Exhibit 34.

8           **THE CLERK:** Thirty-four.

9           **THE COURT:** Thirty-four.

10           (Exhibit Number 34 was marked;  
11 Description: Chronology.)

12           **MS. JERMANN-ROBINSON:** Thank you.

13           Your Honor, may I have one moment?

14           **THE COURT:** Go ahead.

15           **MS. JERMANN-ROBINSON:** Thank you, Your  
16 Honor.

17 **BY MS. JERMANN-ROBINSON:**

18 **Q.** I will return that document to you.

19           In looking at that document, at the hour of  
20 2203:18, can you tell if there was a report about a  
21 description of clothing of the suspect?

22 **A.** What was the timeframe again?

23 **Q.** I think it's 2203:18.

24 **A.** Yes, ma'am.

25 **Q.** Okay. Could you tell if it -- can you tell

1 me what that description is?

2 **A.** A male black wearing a blue bubble coat, blue  
3 hoody and bluejeans.

4 **Q.** Okay. Does it make any indication there that  
5 that was a correction from any earlier broadcast?

6 If you can tell.

7 **A.** Looks like it was a correction from a  
8 broadcast that was at 2149 which was at 9:49 they  
9 put out a broadcast on a male black wearing a  
10 flannel brown plaid with a blue ski mask.

11 **Q.** Okay. So the later broadcast was the one  
12 that called it a bubble coat?

13 **A.** Yes, ma'am.

14 **MS. JERMANN-ROBINSON:** No further  
15 questions.

16 **THE COURT:** Thank you.

17 And is there any cross?

18 **MR. BIGGERS:** Yes, Your Honor.

19 **CROSS EXAMINATION**

20 **BY MR. BIGGERS:**

21 **Q.** Mr. Pender?

22 **A.** Yes, sir, Pender.

23 **Q.** My name is David Biggers, how you doing this  
24 afternoon?

25 **A.** Fine, sir.



1 Q. A few questions.

2 A. Uh-huh.

3 Q. Going through that note that defense counsel  
4 just asked you about, reference a bubble coat, what  
5 about that makes you say it's a correction?

6 A. It says additional to the broadcast which  
7 means the officer on the scene received additional  
8 information on the description.

9 Q. Does that necessarily mean that it's an  
10 actual correction?

11 A. No, sir, just says additional information.

12 Q. And you never went to the scene of this  
13 offense, did you?

14 A. No, sir, I did not.

15 Q. You have no personal knowledge as to what  
16 information was provided to anyone on that scene, do  
17 you?

18 A. Not on the scene, no, sir.

19 Q. In fact, dealing with that particular comment  
20 that you're referencing, do you have any idea as to  
21 how that information was received?

22 A. No, sir.

23 Q. So you don't know who it came from?

24 A. Only -- well, the only thing I know is it  
25 came from the dispatcher, the DP08 and she

1 documented the information.

2 Q. But you don't know who -- I guess who advised  
3 any law enforcement officer of that description  
4 bubble coat.

5 A. No, sir. No, sir.

6 Q. All right. Go back to the first page.  
7 Timestamped 2141:12.

8 Do you see that?

9 A. Yes, sir.

10 Q. What's given in that particular spot?

11 A. This the -- looks like this is the original  
12 description that was given at the time.

13 Q. What is that?

14 A. It says a male black, tall, thin build,  
15 wearing a blue ski mask, brown plaid jacket, unknown  
16 pants.

17 Q. The next event comment, does it detail which  
18 direction the robbery suspect left?

19 A. Yes, sir, it says last scene westbound on 64  
20 on foot.

21 Q. Is there a name of anyone mentioned in the  
22 following comments?

23 A. No, sir.

24 Q. Look at the two --

25 A. Oh, the -- well, at 2141 you've got the name

1 of the individual that called from the business,  
2 Jesse Baker, the employee.

3 Q. Go to the next page for me.

4 A. Uh-huh.

5 Q. 2149:34.

6 A. Yes, sir.

7 Q. See another event comment?

8 A. Yes, sir.

9 Q. What is that?

10 A. This is an update from the officer 827 Delta,  
11 he's putting out an actual broadcast that he  
12 received, he's saying attempted armed robbery of the  
13 business response was a male black, six-two, 210  
14 pounds wearing a blue ski mask. Says flannel brown  
15 plaid along with a silver slug revolver.

16 Q. So there are two comments based on the  
17 dispatch log giving that description of a blue mask  
18 and a flannel or plaid jacket, is that correct?

19 A. Yes, sir.

20 Q. And this is the additional comment of a  
21 revolver is that correct, a silver revolver?

22 A. That is correct.

23 MR. BIGGERS: No further questions at this  
24 time, Your Honor.

25 THE COURT: Thank you.

1 Any redirect?

2 **MS. JERMANN-ROBINSON:** May I do it from  
3 here, Your Honor?

4 **THE COURT:** Sure.

5 **REDIRECT EXAMINATION**

6 **BY MS. JERMANN-ROBINSON:**

7 **Q.** The last description that is shown on that  
8 dispatch, on that summary, I suppose, describes a  
9 bubble jacket, is that correct?

10 **A.** That is correct.

11 **MS. JERMANN-ROBINSON:** Nothing further.

12 **THE COURT:** Okay.

13 Any recross?

14 **MR. BIGGERS:** No, Your Honor.

15 **THE COURT:** All right. Mr. Pender, thank  
16 you very much for coming down. You may step down,  
17 you are excused.

18 **THE WITNESS:** Yes, Your Honor.

19 Thank you.

20 **THE COURT:** Uh-huh.

21 (Witness excused.)

22 **THE COURT:** Call your next witness.

23 **MS. JERMANN-ROBINSON:** Thank you, Your  
24 Honor.

25 I'd like to call Carol Ann Mason.

1                   **THE COURT:** Come forward, right upfront  
2 here.

3                   Okay. Right there.

4                   Raise your right hand.

5                   Do you solemnly swear or affirm, under the  
6 penalties of perjury, the testimony that you are  
7 about to provide the court and jury in the case now  
8 on trial to be the truth, the whole truth and  
9 nothing but the truth, so help you God?

10                  **THE WITNESS:** Yes.

11                  **THE COURT:** Have a seat right over here,  
12 please.

13                  **MS. JERMANN-ROBINSON:** May I proceed, Your  
14 Honor?

15                  **THE COURT:** Go ahead.

16                  **MS. JERMANN-ROBINSON:** Thank you.  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 **CAROL ANN MASON,**

2 was thereupon called as a witness on behalf of the  
3 Defendant, and having been first duly sworn,  
4 was examined and testified as follows:

5 **DIRECT EXAMINATION**

6 **BY MS. JERMANN-ROBINSON:**

7 **Q.** Would you state your name for the record and  
8 spell it for the court reporter.

9 **A.** Carol Ann Mason, Carol Ann Mason.

10 **Q.** And with whom are you employed?

11 **A.** I'm the 9-1-1 Director for Fayette County.

12 **Q.** Okay. And in that position, could you tell  
13 the jury what you do for a living?

14 **A.** I'm in charge of the 9-1-1 Center, we do all  
15 the addressing for the county. Also, Custodian of  
16 the Records for our dispatch center, all the 9-1-1  
17 calls, phone calls, radio traffic.

18 **Q.** And were you in -- working in that capacity  
19 in December of 2012?

20 **A.** Yes, I was.

21 **Q.** Okay. And in working in that capacity now,  
22 did you receive a request from my office for a  
23 dispatch or communications with reference to a  
24 robbery that occurred December 7th, 2012, at the  
25 Hickory Center Market?

1     **A.**       Yes.

2     **Q.**       Okay.  And did you, as a result of -- well,  
3     let me ask you this.

4               In dispatch in Fayette County are there  
5     recordings made of communications between police  
6     officers and the dispatch office?

7     **A.**       Yes.

8     **Q.**       Okay.  And are those recorded?

9     **A.**       Our radio traffic is recorded.

10    **Q.**       And are they -- are they timestamped?  Are  
11    they -- there's a date and a time?

12    **A.**       Yes.

13    **Q.**       Okay.  And it's done in real time?

14    **A.**       Yes, it is.

15    **Q.**       Okay.  And then a report, a written report is  
16    generated or can be generated and that would pretty  
17    much tell you all the communications between the  
18    officers, in between the officers and dispatch that  
19    were recorded?

20    **A.**       Correct.

21    **Q.**       And do you have such a report for that event  
22    on December the 7th, 2012?

23    **A.**       Yes, I do.

24    **Q.**       And can you tell me the time that you were  
25    first notified, the dispatch was first notified

1 about this robbery?

2 **A.** At 2216.

3 **Q.** Okay. And what time is that?

4 **A.** 10:16.

5 **Q.** Sixteen.

6 **A.** P.m.

7 **Q.** Okay.

8 **MS. JERMANN-ROBINSON:** No further  
9 questions.

10 **THE COURT:** All right. Will there be any  
11 cross.

12 **MR. BIGGERS:** Yes, Your Honor.

13 **CROSS EXAMINATION**

14 **BY MR. BIGGERS:**

15 **Q.** Good afternoon, Ms. Mason.

16 **A.** Good afternoon.

17 **Q.** My name is David Biggers, I'm with the United  
18 States Attorney's office, I have a few questions for  
19 you.

20 Now you briefly described your duties with  
21 Fayette County. What type of information would  
22 dispatch be responsible for documenting or keeping  
23 up with on any particular call?

24 **A.** Any call that comes in from a police officer  
25 or a 9-1-1 call or admin call if it's an emergency



1 or someone needing assistance.

2 Q. And I believe you testified to the time of --  
3 that the call came in for an attempted robbery of  
4 the Hickory Center Market, is that correct?

5 A. Correct.

6 Q. And your testimony was that that time was  
7 2216?

8 A. Correct.

9 Q. That's 10:16 p.m., is that correct?

10 A. Correct.

11 Q. Do you know if the law enforcement was  
12 notified at any point?

13 A. Yes.

14 Q. Which -- what law enforcement agency was  
15 notified?

16 A. Oakland Police Department.

17 Q. What time were they notified?

18 A. They were notified at 2216:59.

19 Q. And in non-military time, what time is that?

20 A. 10:16:59.

21 Q. One second from 10:17?

22 A. The call came in at 2216:16, okay, so we get  
23 down to tenths of seconds.

24 Q. Okay. So --

25 A. And then Oakland PD was dispatched at

1 2216:59.

2 Q. Which is the equivalent of 10:16:59?

3 A. Correct.

4 Q. Do you show when Oakland police arrived on  
5 the scene of the Hickory Center Market?

6 A. 2217:07.

7 Q. We're talking about a matter of seconds?

8 A. Correct.

9 Q. Is that 10:17:07?

10 A. Correct.

11 Q. Do you show if anyone was taken in custody in  
12 relation to this attempted robbery at the Hickory  
13 Center Market?

14 A. Dispatch was advised they had someone in  
15 custody at 2220:59.

16 Q. What time is that?

17 A. 10:20:59.

18 Q. 10:20.

19 A. Correct.

20 Q. The call came out at roughly 10:16 --

21 A. 16, uh-huh.

22 Q. And by 10:20 someone was already in custody,  
23 is that correct?

24 A. Correct.

25 Q. Now do you show -- if any evidence was

1 collected, would dispatch keep track of that?

2 **A.** If they were advised by the officer.

3 **Q.** In this particular case do you know if any of  
4 the officers with the Oakland Police Department  
5 notified dispatch the recovery of a Rossi .38  
6 caliber firearm?

7 **A.** They advised they had a weapon at 2252:21, so  
8 10:52.

9 **Q.** 10:52?

10 **A.** Correct.

11 **Q.** So that's approximately 30 minutes after they  
12 advised they had a subject in custody?

13 **A.** Correct.

14 **MR. BIGGERS:** No further questions, Your  
15 Honor.

16 **THE COURT:** Thank you.  
17 Any redirect?

18 **MS. JERMANN-ROBINSON:** Just two questions,  
19 Your Honor.

20 **THE COURT:** Okay.

21 **REDIRECT EXAMINATION**

22 **BY MS. JERMANN-ROBINSON:**

23 **Q.** In looking at your report.

24 Do you show that they were advised that any  
25 other property was found by these officers besides

1 the weapon?

2 A. Not that I see.

3 Q. Take your time?

4 A. Dispatch advised that nothing was taken from  
5 the store.

6 Q. As you -- as you look through you don't see  
7 whether they recovered a mask or any gloves, do you?

8 A. No.

9 MS. JERMANN-ROBINSON: Thank you.

10 No further questions.

11 THE COURT: And recross based on that?

12 MR. BIGGERS: Yes, Your Honor.

13 **REDIRECT EXAMINATION**

14 **BY MR. BIGGERS:**

15 Q. Ms. Mason, based on the dispatch report, can  
16 you tell what area law enforcement officers were  
17 searching?

18 Direct your attention specifically to  
19 2219:48.

20 A. They advised that he would be at Highway 196  
21 northbound on foot.

22 Q. And what time was that?

23 A. That was at 2219:48.

24 Q. Or 10:19:48?

25 A. Uh-huh.

1                   **MR. BIGGERS:** No further questions Your  
2 Honor?

3                   **THE COURT:** Okay. All right, Ms. Mason,  
4 thank you very much, you can step down, you are  
5 excused.

6                   **THE WITNESS:** Thank you.

7                   **THE COURT:** Oh, I do have one question I  
8 didn't get, you were going through all of those  
9 numbers.

10                   And the time that the police arrived at  
11 the scene, you gave that but I missed it.

12                   **THE WITNESS:** 2217:07.

13                   **THE COURT:** That's 10:17 --

14                   **THE WITNESS:** Yes, sir.

15                   **THE COURT:** -- '07?

16                   All right, thank you.

17                   **THE WITNESS:** Uh-huh.

18                   (Witness excused.)

19                   **THE COURT:** All right. If you would,  
20 please, call your next witness.

21                   **MS. JERMANN-ROBINSON:** The defense rests.

22                   **THE COURT:** All right, thank you,  
23 Ms. Robinson.

24                   Will there be any rebuttal?

25                   **MR. BIGGERS:** No, Your Honor.

1                   **THE COURT:** Okay, thank you.

2                   Okay. Ladies and gentlemen, you heard  
3 from Ms. Robinson that the defense rest, they have  
4 no additional proof. And also from the government  
5 there will be no rebuttal proof. And so you've  
6 heard all the proof that you are going to hear in  
7 this case as far as making a final decision.

8                   The next step in the whole process for you  
9 will be the closing arguments of counsel and finally  
10 after all the arguments are done, the instruction --  
11 the final instructions of law that I'm working on  
12 back in chambers, but we haven't got to that point  
13 yet.

14                  Now that all of the proof is over, I'm  
15 going to have to ask you to step into the jury room  
16 for a short time. I will talk with the lawyers  
17 about how we are going to advance and deal with  
18 those last steps this afternoon, whether you will go  
19 home a little early or whether we will be able to go  
20 ahead with arguments and hopefully charging this  
21 afternoon.

22                  But at this point you will need to step  
23 into the jury room. And remember my instructions,  
24 leave the notebooks and don't discuss, get back to  
25 you and with a decision of how we are going to move

1 as far as you are concerned in just a few minutes.

2 (Jury out at 3:14 p.m.)

3 **THE COURT:** As I said, I've been working  
4 on a draft of the instructions back there.

5 Are there any special requests from either  
6 side that I should include?

7 **MS. JERMANN-ROBINSON:** I do have a special  
8 request, it has nothing to do with jury  
9 instructions, but I've written myself six notes.

10 I would like to now, again, at the end of  
11 my proof --

12 **THE COURT:** Uh-huh.

13 **MS. JERMANN-ROBINSON:** -- to renew my  
14 motion, *Jackson versus Virginia*, because I don't  
15 want to get caught --

16 **THE COURT:** I should have asked you if  
17 there were any additional motions.

18 **MS. JERMANN-ROBINSON:** Yes.

19 **THE COURT:** Okay.

20 **MS. JERMANN-ROBINSON:** I renew the motion  
21 to suppress as well. I understand there is no  
22 further proof on that, but for the record --

23 **THE COURT:** Yes, I understand.

24 **MS. JERMANN-ROBINSON:** -- I object under  
25 *Jackson versus Virginia* for judgment of acquittal.

1                   **THE COURT:** Uh-huh.

2                   On both of the motions I have to overrule  
3 them, the same reasons that I gave before. Okay.

4                   Anything else as far as the instructions  
5 are concerned?

6                   Seems like it's pretty straightforward,  
7 identification is in there, opinion witness,  
8 stipulation, judicial notice, I mean just the  
9 usuals.

10                  And then, of course, the offenses and I  
11 will have verdict forms attached to the  
12 instructions. Okay.

13                  Unless there is anything, I will go and  
14 see if I can get those finished. I'm pretty close  
15 back there, I'm still fooling around with language  
16 for the actual robbery, attempt robbery offenses.

17                  **MR. BIGGERS:** Only two, I guess two  
18 special requests from the government, Your Honor.

19                  I would ask that the actual verdict form  
20 indicate brandished on there in this particular  
21 case.

22                  **THE COURT:** Okay.

23                  **MR. BIGGERS:** And secondly, dealing with  
24 the instructions themselves, I would ask that the  
25 court instruct, give the pattern jury instruction on



1 flight based on the fact was found hidden in the  
2 woods within 2,000 feet of the business, attempt  
3 robbery.

4 **THE COURT:** The defense position on  
5 flight?

6 **MS. JERMANN-ROBINSON:** Your Honor, I'd  
7 think the proof has shown that the defendant, Mr.  
8 Drew, was found in the woods.

9 The question is whether or not there was  
10 flight at all. And I don't think it's an  
11 appropriate instruction to give.

12 But I will submit it to the court.

13 **THE COURT:** All right. I'll take a look  
14 at it and the language of the flight instruction,  
15 I'll you all know that shortly. Okay.

16 All right.

17 **MS. JERMANN-ROBINSON:** Thank you, Your  
18 Honor.

19 **THE COURT:** We'll be in recess.

20 The court stands in recess.

21 (Recess at 3:24 p.m.)

22 **THE COURT:** Sorry it took me so long to  
23 get the instructions together.

24 I just had difficulty with a couple of the  
25 charges, the proper language and then putting

1 together the verdict forms. I'm sure you all will  
2 have some comments about it.

3 Let me start first with the government,  
4 see if there are any request for changes, deletions  
5 or additions, things of that nature.

6 **MR. BIGGERS:** Yes, Your Honor.

7 First, just jumping to the verdict form.

8 **THE COURT:** Okay.

9 **MR. BIGGERS:** This is, I would say for me  
10 a relatively new issue, but the way the court has  
11 it, Mr. Herrin already told us about the reordering  
12 of the counts on the verdict form.

13 **THE COURT:** Well, there was an error on  
14 that, I think three and four were transposed, I got  
15 mine done and you all got corrected copies obviously  
16 for verdict.

17 **MR. BIGGERS:** Referring to counts, I guess  
18 it would be two and five, dealing with the actual  
19 carrying, use, carrying and brandished.

20 **THE COURT:** Right.

21 **MR. BIGGERS:** Just out of an abundance of  
22 caution the government would ask, I guess, that the  
23 form be modified in a way to allow the jurors to  
24 select whether they found that he used and carried  
25 it.

1           **THE COURT:** I started to do that and then  
2 it complicated it in such a way that I decided to  
3 put them together, but I can do that, I can -- I can  
4 you know, if you are carrying it, I know there's a  
5 difference, but you have to carry it in order to  
6 brandish it, but brandish is a little further out  
7 there as far as the use of it during the event.

8           But I can break them out and have a --  
9 have, you know, separate which would result in  
10 probably two decisions that I have to make in the  
11 verdict form, I can do that.

12           **MR. BIGGERS:** That's one thing, Your  
13 Honor.

14           And the second, I see now is dealing with  
15 the stipulations.

16           Just a second.

17           **THE CLERK:** Do you want the defendant in  
18 here?

19           **THE COURT:** We have to start over, the  
20 defendant is not here. He needs to be here. We  
21 have to start over when he gets here. I just didn't  
22 even notice.

23           **THE CLERK:** (On the phone)  
24 Can you bring Drew down, please?  
25 Thank you.

1           **THE COURT:** Let's stand in recess.

2           **THE CLERK:** Court stands in recess.

3           (Recess at 5:39 p.m.)

4           (Defendant is now present at 5:42 p.m.)

5           **THE COURT:** All right. Let's come back on  
6 the record.

7           Mr. Drew, I'm sorry, we had started  
8 talking about the jury charge, what I'm going to  
9 read to the jury. And then my clerk, Mr. Herrin,  
10 here noticed that you weren't here, so I stopped.  
11 And then, you know, this is your trial, you know,  
12 and you need and it's your right to be here  
13 throughout every step of it.

14           So we're going to backup and start over  
15 again with this discussion and make sure you are  
16 present for everything. Okay.

17           **MR. ROBERT DREW:** Yes, sir.

18           **THE COURT:** All right. Now we'll back and  
19 the first thing I think we spoke about,  
20 Mr. Biggers -- I first asked if both sides had  
21 enough time to take a look at the proposed charge.

22           And then we had indicated that a couple of  
23 the charges need to be reversed, that three and four  
24 needed to be changed over. I think the -- my  
25 secretary has already done that.

1           And the next thing was talking about  
2 counts two and five of the charge and that language  
3 carrying and brandishing.

4           Why don't you go ahead and make the record  
5 again on that.

6           **MR. BIGGERS:** Yes, Your Honor.

7           The government, just out of an abundance  
8 of caution, based on the way the law, the courts  
9 have come back on that, the government would ask  
10 that the court include two separate spaces for the  
11 jury to decide if the defendant merely used and  
12 carried or used, carried and brandish for them to  
13 check those boxes.

14           **THE COURT:** All right. And I'll make  
15 those -- those change -- well, let me hear from the  
16 defense first on that issue.

17           **MS. JERMANN-ROBINSON:** I think he's right.

18           **THE COURT:** All right. I will make that  
19 change and you all will be able to see that prior to  
20 us getting into argument and charge. I'll make the  
21 change in both counts.

22           **MR. BIGGERS:** On page six, Your Honor, the  
23 judicial notice portion, it only list Memphis,  
24 Tennessee, the fact that it adds Eads, Tennessee as  
25 that is the location of the Hickory Center Market as

1 listed in the indictment.

2           **THE COURT:** Actually that change didn't  
3 get to my secretary. I will make the change, but I  
4 wasn't going to say Memphis, Tennessee or Eads,  
5 Tennessee. I think the request for judicial notice  
6 was that the market and KFC were within the Western  
7 District of Tennessee and that's how it will read.

8           Like I say, that page, I must not have  
9 given it to my secretary, but that change will be  
10 made.

11           **MR. BIGGERS:** All right. Beginning on  
12 page ten, Your Honor.

13           **THE COURT:** Okay.

14           **MR. BIGGERS:** The detailed instruction on  
15 the element of affecting interstate commerce with  
16 regard to the attempted robbery count, and I  
17 apologize if I'm missing it, but it does not mention  
18 the stipulation between the parties at all as the  
19 stipulation is mentioned for the prior felonies on  
20 page 14. Just ask that the court include some  
21 language relating to the stipulation of the parties,  
22 that we made it an exhibit, that both parties  
23 stipulate at the time of this incident both stores  
24 were engaged, that the businesses were engaged in  
25 interstate commerce.

1           **THE COURT:** I should have been more  
2 vigilant communicating with my secretary because  
3 there is an instruction that I always include about  
4 stipulations, a separate instruction about the  
5 stipulation and what it involved.

6           Now do you need it on page ten? Because I  
7 was going to have a separate instruction pertaining  
8 to stipulation and it will go right after judicial  
9 notice.

10          **MR. BIGGERS:** Well, I would have to see  
11 it, Your Honor, I just made that comment and  
12 recommendation at page ten --

13          **THE COURT:** All right.

14          **MR. BIGGERS:** -- because of the way it's  
15 included at page 14 dealing with the felony. You  
16 said the parties have stipulated that the defendant  
17 was convicted of a crime and you also good on and  
18 say I instruct you in this connection the prior  
19 conviction is an element. The government does not  
20 have to present any proof of that, that's the only  
21 reason why I said at page ten.

22          But depending on how the stipulation  
23 language reads after judicial notice, that could be  
24 satisfactory to the government as well.

25          **THE COURT:** Okay, I can do that.

1           **MR. BIGGERS:** The only other potential  
2 difference, Your Honor, would be to correspond with  
3 the language in the verdict form where you discuss  
4 counts two and five where you mention the use,  
5 carrying or brandishing. The use, carrying and --  
6 and/or brandishing, just depending on the way the  
7 verdict form appears.

8           That's all, that's it from the government.

9           **THE COURT:** Are you asking that it be  
10 "and?"

11          **MR. BIGGERS:** And/or.

12          **THE COURT:** And/or.

13          **MR. BIGGERS:** It just depend on what  
14 they -- what they find, Your Honor.

15          **THE COURT:** And you are making reference  
16 to the verdict form, is that correct?

17          **MR. BIGGERS:** No. The language in the  
18 actual review of the elements, that's on page 11.

19          **THE COURT:** Okay. Uh-huh.

20          **MR. BIGGERS:** Element two, the use,  
21 carrying or brandishing of the firearm was during  
22 and in relation to the crime charged in Count One,  
23 the use, carrying and/or brandishing of the  
24 firearm --

25          **THE COURT:** Okay.



1           **MR. BIGGERS:** -- in relation to Count One.

2           **THE COURT:** Not a problem.

3           **MR. BIGGERS:** The same with regard to  
4 Count Five or Count Four.

5           **THE COURT:** Okay. Now let me hear from  
6 the defense.

7           **MS. JERMANN-ROBINSON:** Your Honor, page  
8 six under identification.

9           **THE COURT:** Okay.

10          **MS. JERMANN-ROBINSON:** Because one of the  
11 issues is the identification of the defendant as the  
12 person who committed the crime, and maybe I'm  
13 calling it wrong, but it appears to me that there is  
14 identification of clothing and identification of  
15 clothing being the same clothing that was worn by  
16 the person doing the crime, but there was never an  
17 actual identification of the defendant except for,  
18 you know, you've seen the picture of Mr. Drew and  
19 now you see him here, can you identify him. And I  
20 don't think that's what that's referring to. So I'm  
21 not sure if identification is properly -- should be  
22 properly charged.

23          **THE COURT:** You think I should not include  
24 a definition -- an instruction on identification?

25          **MS. JERMANN-ROBINSON:** That's right, Your

1 Honor.

2 **THE COURT:** The government.

3 **MR. BIGGERS:** Your Honor, the government  
4 would submit that identification instruction is  
5 necessary in this case under the circumstances, and  
6 so the wording of it, the identification of the  
7 defendant, specifically when you get to some of the  
8 elements here, the witness' ability to identify the  
9 defendant, I mean, some of that can be altered  
10 because we are talking about clothes, but outside of  
11 that the government submits that the identification  
12 instruction should be given.

13 **THE COURT:** Ms. Robinson, how can --  
14 that's an element of the offense that they have to  
15 prove that the defendant committed the crime.

16 **MS. JERMANN-ROBINSON:** The word  
17 identification, I guess, it bothered me because we  
18 already went through a motion to suppress and  
19 saying, well, there was no identification of the  
20 defendant. There was an identification of clothing.  
21 And it seems not right with the facts that have been  
22 brought in by the testimony, Your Honor.

23 I understand generally there is --

24 **THE COURT:** I've never heard a defense  
25 lawyer make that request that I remove

1 identification.

2 **MS. JERMANN-ROBINSON:** I've never -- I've  
3 never made the request either, Your Honor, I  
4 hesitate to do so, it's just factually speaking, it  
5 seems to imply there was an identification made of  
6 him and there wasn't.

7 But I will just leave it at that. I don't  
8 have any case law to backup my objection.

9 **THE COURT:** I'm going to have to overrule  
10 that objection. I -- I just think that that's an  
11 element of the offense. And regardless of defense  
12 motion, this goes to the Court of Appeals, I don't  
13 give an identification, that goes against much of  
14 the instructions that the government's burden is to  
15 prove that the defendant committed the crimes.

16 And so I'm going to have to overrule that.

17 Now I may play with the language, I guess  
18 as both of you all are saying, and I will read it  
19 again this evening, and if I make any changes to it,  
20 I will obviously let you all know. But removing  
21 identification as, you know, one of the  
22 instructions, I'm -- I'm not going to do that.

23 **MS. JERMANN-ROBINSON:** Thank you, Your  
24 Honor.

25 The only other thing that I have is on

1 page 14.

2 **THE COURT:** 14?

3 **MS. JERMANN-ROBINSON:** Yes.

4 And this has to do with the 922(g) charge,  
5 looks like you have charged both actual and  
6 constructive possession. It appears to me that the  
7 proof from the government is that he was actually in  
8 possession, that he had it, that he used it, that he  
9 carried it, that he stuck it under some leaves. I  
10 don't think there is proof of constructive  
11 possession.

12 And so I would ask the court to strike  
13 paragraph -- full paragraphs one, two, three, four,  
14 about five lines down, it said, did the defendant,  
15 and I would strike either, I'd just say the  
16 defendant had actual possession of the firearm and  
17 then strike or that he had the power and intention  
18 to exercise control over it even though it is not in  
19 his physical possession, strike that and then leave  
20 you may find the government has proven possession.

21 **THE COURT:** Uh-huh.

22 **MS. JERMANN-ROBINSON:** Under *United States*  
23 *versus James* and a case actually that I tried,  
24 *United States versus Albert Smith*, it was found to  
25 be error, although in my case it was harmless, and

1 in *James* it was harmful error to give the  
2 constructive possession charge when the evidence put  
3 on by the government in the proof was purely had  
4 actual possession.

5 **THE COURT:** The government.

6 **MR. BIGGERS:** Your Honor, the government  
7 submits that language, as it is included in the  
8 current instruction, is appropriate in this case.  
9 Even by the defense counsel's recounting of the  
10 government's case, the defendant was in actual  
11 possession of the firearm during the time that both  
12 attempted robberies, however, when the firearm was  
13 recovered, it was hidden in the leaves, that's  
14 constructive possession in the area where the  
15 defendant left. The government submits that both  
16 are appropriate in this case.

17 **THE COURT:** I think I'm to overrule the  
18 objection and leave the language in there, and it's  
19 for that very reason, that during the actual videos  
20 showing the crimes, he was in actual possession of  
21 the firearm. But at the time that he was taken into  
22 custody, it was not on him, he did not have actual  
23 possession.

24 And, in fact, it took the officers another  
25 20 or 30 minutes to locate the firearm in the area

1 immediately there by in the leaves where the  
2 defendant was found.

3 And so, if we didn't have that testimony,  
4 then it would be different, but in light -- in light  
5 of the officer's testimony when he was actually  
6 taken into custody and it wasn't in his actual  
7 possession. And I'm -- I'm going to overrule the  
8 request and leave the language there.

9 **MS. JERMANN-ROBINSON:** That's all I have,  
10 Your Honor.

11 The instructions are fine other than that.

12 **THE COURT:** All right. So let me just go  
13 through and make sure that I get all the changes  
14 that need to be made.

15 I need to include first in the larger or  
16 the general instructions the stipulation that I  
17 normally put. And that will be either before or  
18 after judicial notice. I am going to modify or  
19 change what we have here as far as judicial notice  
20 because actually went into more detail than the  
21 cities, it was the -- each of the businesses were  
22 within the Western District of Tennessee.

23 And then, again a reference to the  
24 stipulation on page ten. And that was the  
25 stipulation dealing with the --

1           It was on page ten you wanted that added,  
2 wasn't it?

3           **MR. BIGGERS:** Yes, Your Honor, where you  
4 discuss the potential affect on commerce between two  
5 or more --

6           **THE COURT:** Yeah, commerce, that's what it  
7 was, yeah, towards the bottom.

8           And I will add that language there to  
9 clean that up.

10           Then also Count Two and five where we have  
11 carried or brandished, it will be changed to carry  
12 and/or brandished.

13           I needed to double-check with the defense,  
14 the request that the government made, whether there  
15 is any objection to that?

16           **MS. JERMANN-ROBINSON:** No objection, Your  
17 Honor.

18           **THE COURT:** Okay. And then finally the  
19 verdict form, I'm going to break out in someday the  
20 carrying, use and carrying of the firearm and then  
21 breakout brandishing so that the jury can make a  
22 separate finding in that regard in reference to  
23 counts two and five of the verdict forms.

24           Okay. Those are the things that I have  
25 right now. If there any others, let me know now.

1           **MR. BIGGERS:** One small one from the  
2 government, Your Honor, very small.

3           On page two --

4           **THE COURT:** Okay.

5           **MR. BIGGERS:** -- the paragraph beginning  
6 at statements, arguments and remarks, the last  
7 sentence of that paragraph there, do not let rumors,  
8 suspensions or anything else that you may have seen  
9 or heard outside of court influence your decision in  
10 any way.

11          **THE COURT:** Okay.

12           The preceding sentence and the following  
13 sentence made reference to evidence. The government  
14 would just ask that the word "evidence" be  
15 transposed for "court" in that sentence or to read,  
16 do not let rumors, suspensions or anything else that  
17 you may have seen or heard outside of the evidence  
18 to influence your decision in any way.

19           The following sentence says, the evidence  
20 in the case includes, and the previous sentence says  
21 make a decision based solely on -- based only on the  
22 evidence. Make sure it is consistent with the theme  
23 there.

24          **THE COURT:** I'm going to leave it the way  
25 it is. I think it is fine the way it is. I make



1 several references throughout this what the evidence  
2 is and what they should consider. So I think that's  
3 actually pretty clear, it is not going to confuse  
4 the jury or anything.

5 **MS. JERMANN-ROBINSON:** I agree.

6 **THE COURT:** All right. Is there anything  
7 else?

8 **MR. BIGGERS:** Nothing else from the  
9 government, Your Honor.

10 **MS. JERMANN-ROBINSON:** No.

11 **THE COURT:** Okay. Then we will go ahead  
12 and adjourn court and I'd like to get started right  
13 at nine o'clock if at all possible tomorrow because  
14 I have a busy day.

15 And so if you could get up here and get  
16 set up and all a few minutes before, I would  
17 appreciate it. Okay.

18 All right, let's go on and adjourn court.

19 **MS. JERMANN-ROBINSON:** Thank you, Your  
20 Honor.

21 **THE CLERK:** All rise.

22 This honorable court now stands in  
23 adjournment until tomorrow morning at nine a.m.

24 (Adjournment at 5:59 p.m.)  
25

**THURSDAY MORNING**

**APRIL 24, 2014**

The trial of this case resumed on this date, Thursday, April 24, 2014, at nine o'clock a.m., when and where evidence was introduced and proceedings were had as follows:

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**THE COURT:** Good morning, everyone.

**MR. BIGGERS:** Good morning.

**MS. JERMANN-ROBINSON:** Morning, Your Honor.

**THE COURT:** All right. I think we are still waiting on the alternate juror so it's a little delay anyway -- oh, she's arrived.

I wanted to give you all a fresher copy of the closing instructions, turn your attention to a couple of things.

I think I covered everything that we discussed yesterday. Ms. Robinson, I thought a lot about I.D., and so I put in a different instruction on identification. It stills keeps the requirement and the burden on the government, but it eliminates a lot of the verbiage and language about a specific

1 identification of him.

2 Page seven is where it's located if you  
3 want to take a look.

4 **MS. JERMANN-ROBINSON:** I -- I have read it  
5 and it's fine --

6 **THE COURT:** Okay.

7 **MS. JERMANN-ROBINSON:** -- I think it's  
8 appropriate.

9 **THE COURT:** All right. And just take a  
10 look at it.

11 **MR. BIGGERS:** Looked at it, Your Honor, it  
12 looks perfect.

13 **THE COURT:** All right. Yeah, it's more  
14 concise, I guess it's better for this situation.  
15 Okay.

16 **MS. JERMANN-ROBINSON:** Thank you, Your  
17 Honor.

18 **THE COURT:** Also I want you all to turn  
19 your attention to the verdict pages and see  
20 specifically counts two and five, the 924(c) counts.

21 What I did was, you know, it's hard to  
22 think about how to really set it out. It really  
23 isn't a separate verdict but it's a factual finding  
24 that the jury has to -- has to make.

25 And so I set it out in a separate

1 questions, first dealing with carrying and/or using  
2 a firearm during and in relation. Of course, they  
3 will find guilty or not guilty. If they find him  
4 not guilty, then we're done. And I will give that  
5 instruction, we will deal with it later.

6 But then further that factual finding is  
7 immediately after as to Count Two the defendant  
8 brandished or did not brandish a firearm during and  
9 in relation. So hopefully that satisfies that  
10 question for the government as well as for the, you  
11 know, the Court of Appeals if it ever -- if it ever  
12 gets that far.

13 Mr. Biggers, I'm going to pass this back  
14 to you.

15 Two things that you made a request, I made  
16 those changes in the instructions. I just want to  
17 make sure that you discussed them with Ms. Robinson,  
18 let's see.

19 I need to -- I had that -- I left -- I  
20 left the actual page in chambers there, I thought I  
21 had it, these are your old instructions that were  
22 marked up, but there was another paragraph, a  
23 sentence or two further finding, in that language I  
24 did include, I also changed, made the other request  
25 that you made about that third element.

1           **MR. BIGGERS:** Your Honor, I believe it's  
2 on -- the first change was that additional  
3 paragraph --

4           **THE COURT:** Yeah.

5           **MR. BIGGERS:** -- started with first, you  
6 do not have to find the interstate commerce is  
7 actually affected --

8           **THE COURT:** That's on page 11.

9           **MR. BIGGERS:** -- that's on page 11.  
10 I discussed that with defense counsel and  
11 she is fine with that.

12           **MS. JERMANN-ROBINSON:** No problem.

13           **MR. BIGGERS:** And in addition, and I do  
14 see it on page 11.

15           **THE COURT:** Yeah.

16           **MR. BIGGERS:** The other change with regard  
17 to the defendant's attempt to actual obstruct  
18 interstate commerce.

19           **THE COURT:** The third element.

20           **MR. BIGGERS:** The third element on page --  
21 shown on page nine.

22           **THE COURT:** There it is, yes.

23           **MR. BIGGERS:** That is satisfactory to the  
24 goverment as well.

25           **THE COURT:** I made that change in

1 language, too. Okay.

2 **MS. JERMANN-ROBINSON:** That's fine.

3 **THE COURT:** All right. Do you all need a  
4 few minutes to keep going over this?

5 All the things we discussed yesterday, I  
6 believe I have made those changes and included them.  
7 The main ones, my concern was the verdict page on  
8 the 924(c)'s, and then I changed the identification.

9 **MS. JERMANN-ROBINSON:** I think they're  
10 fine, Your Honor.

11 **MR. BIGGERS:** Fine with the government and  
12 we are ready to proceed into closing, Your Honor.

13 **THE COURT:** All right.

14 **MS. JERMANN-ROBINSON:** I do have one  
15 request, Your Honor.

16 **THE COURT:** Yes.

17 **MS. JERMANN-ROBINSON:** I would like to  
18 have the podium brought more to the middle in front  
19 of the jury. I know you don't want anyone blocked,  
20 but if the court would permit me to do that, I won't  
21 move it until after Mr. Biggers --

22 **THE COURT:** That's fine, that is not a  
23 problem.

24 **MS. JERMANN-ROBINSON:** Thank you, Your  
25 Honor.

1           **THE COURT:** Maybe Mr. Herrin or either one  
2 of the prosecutors or our security officer can help  
3 you move that.

4           **MS. JERMANN-ROBINSON:** Thank you.

5           **THE COURT:** But it's no problem to move it  
6 out in the middle. There is a wire for the  
7 microphone, so please be careful, I would hate to  
8 see that thing tumble over.

9           **MS. JERMANN-ROBINSON:** I will.

10          **THE COURT:** Okay.

11          **MR. BIGGERS:** I guess -- I guess one  
12 request, Your Honor.

13               May I obtain one of the exhibits?

14          **THE COURT:** Sure, uh-huh.

15          **MS. JERMANN-ROBINSON:** I will say I  
16 separated some out. But --

17          **MR. BIGGERS:** I think it's one of the  
18 videos, the copy we have of the video is not playing  
19 this morning and I need to see it.

20          **THE COURT:** Okay, that's fine.

21               Okay. Obviously both sides have full  
22 access to use of all of the exhibits, so that is not  
23 a problem.

24          **MR. BIGGERS:** I speak with Mr. Herrin  
25 briefly.

1           **THE COURT:** Go ahead.

2           Mr. Biggers -- Ross, it's your old copy.

3           There is a typo on page eight that I have  
4 corrected, a couple of words were removed,  
5 definition of robbery, and right at the very bottom  
6 on page eight I made that change.

7           It reads robbery is the unlawful attempt  
8 of taking, and it should read robbery is the  
9 unlawful taking. The copy that will go back to the  
10 jury, that change has already been made. Okay.

11          Anything else?

12          I think we are ready to go ahead and begin  
13 the arguments.

14          **MS. JERMANN-ROBINSON:** Yes.

15          **MR. BIGGERS:** That's correct, Your Honor.

16          **THE COURT:** All right. No one is going to  
17 be arguing for two hours, are they?

18          I don't think I'm going to have put a  
19 limit on anyone. All right.

20          Okay. Let's bring in the jury.

21          (Jury present at 9:25 a.m.)

22          **THE COURT:** All right. Good morning,  
23 folks.

24          **A JUROR:** Good morning.

25          **THE COURT:** I hope you had a good evening.



1    Okay.  We worked through all of the things that we  
2    need to and we are now ready to proceed.  Both sides  
3    are ready with their -- their closing arguments and  
4    afterwards we will go straight into the instructions  
5    that I have for you.  Okay.

6                So I'm going to stop talking and turn it  
7    over to the lawyers.

8                Now remember that the government goes  
9    first, they will be able to argue.  Then the  
10   defendant will have a full opportunity to argue.  
11   And assuming they do, the government has one last,  
12   what we call rebuttal because they have that burden  
13   of proof.  And afterward I will go straight into the  
14   written instructions.  The law requires that I  
15   actually read them to you.  Okay.

16               So bear along with us, it won't be too  
17   much longer and you will begin deliberating on the  
18   case.

19               All right.  So we turn to the government.  
20   I believe it will be Mr. Stringfellow.

21               **MR. BIGGERS:**  Yes, Your Honor.

22               **THE COURT:**  You may proceed.

23               **MR. STRINGFELLOW:**  Thank you, Your Honor.

24               **THE COURT:**  Uh-huh.

25               (Closing arguments.)

(Jury Instructions.)

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C E R T I F I C A T E

I, Lynn Dudley, do hereby certify that the foregoing 458 pages are, to the best of my knowledge, skill and ability, a true and accurate transcript from my stenotype notes of the trial of on April 21 thru 24, 2014, in the matter of:

United States of America

vs.

Robert Drew

Dated this 28th day of August 2014.

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Lynn Dudley  
Official Court Reporter  
United States District Court  
Western District of Tennessee